

BEFORE THE
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY) DOCKET NO.
) 05-0159
)
Proposal to implement a competitive)
procurement process by establishing)
Rider CPP, Rider PPO-MVM, Rider)
TS-CPP, and revising Rider PPO-MI.)
(Tariffs filed February 25, 2005))

and

CENTRAL ILLINOIS LIGHT COMPANY) DOCKET NO.
d/b/a AmerenCILCO) 05-0160
-and-)

CENTRAL ILLINOIS PUBLIC SERVICE) DOCKET NO.
COMPANY d/b/a AmerenCIPS) 05-0161

-and-)
ILLINOIS POWER COMPANY) DOCKET NO.
d/b/a AmerenIP) 05-0162

Proposal to implement a competitive) CONSOLIDATED
procurement process by establishing)
Rider BGS, Rider BGS-L, Rider RTP,)
Rider RTP-L, Rider D, and Rider MV.)
(Tariffs filed on February 28, 2005))

Springfield, Illinois
September 8, 2005

Met, pursuant to notice, at 9:00 A.M.

BEFORE :

MR. MICHAEL WALLACE, Administrative Law Judge
MR. LARRY JONES, Administrative Law Judge

SULLIVAN REPORTING COMPANY
By: Jami Tepker, Reporter Ln.# 084-003591
and Lori Bernardy, Reporter Ln.# 084-004126

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29 (Appearing on behalf of the Cook County State's
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5 (Appearing on behalf of the People of the
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18 (Appearing on behalf of Building Owners &
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22 (Appearing on behalf of the Illinois
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2 (Wherepon AG Cross Exhibits
3 9, 10, and 11 were marked for
4 identification.)

5 JUDGE WALLACE: Pursuant to the direction of
6 the Illinois Commerce Commission, I now call Docket
7 05-0159.

8 This is the proposal of Commonwealth Edison
9 Company to implement a competitive procurement
10 process.

11 May I have appearances for the record, just
12 your name, starting with Commonwealth Edison.

13 MR. RIPPIE: For Commonwealth Edison Company,
14 Glenn Rippie and Paul Hanzlik of Foley & Lardner,
15 LLP.

16 MR. FLYNN: For the Ameren Companies, Chris
17 Flynn, Peter Trombley, and Laura Earl from Jones Day
18 and Ed Fitzhenry.

19 MR. LAKSHMANAN: For Dynegy, Inc., Joseph L.
20 Lakshmanan.

21 MR. STAHL: For Midwest Generation, David Stahl
22 and Ronit Barrett from Eimer, Stahl, Klevorn &

1 Solberg, LLP.

2 MR. FOSCO: For Staff of the Illinois Commerce
3 Commission, Carmen Fosco, John Reichart, John
4 Feeley, and Carla Scarsella.

5 MS. HEDMAN: For the People of the State of
6 Illinois, Susan Hedman and Susan Satter from the
7 Office of the Attorney General.

8 MR. ROBERTSON: Eric Robertson, Ryan Robertson,
9 and Conrad Reddick on behalf of IIEC.

10 MS. PUSEMP: For the Building Owners and
11 Managers Association of Chicago, Christina Pusemp,
12 Patrick Giordano, and Paul Neilan from Giordano &
13 Neilan, Ltd.

14 MR. BORDERS: Coalition of Energy Suppliers,
15 Christopher J. Townsend, William A. Borders,
16 DLA Piper Rudnick Gray Cary US LLP.

17 MS. SPICUZZA: On behalf of the Cook County
18 State's Attorney's Office, Marie Spicuzza.

19 MS. KAREGIANES: Myra Karegianes on behalf of
20 Constellation Energy Commodities Group, Inc.

21 JUDGE WALLACE: Anyone in Chicago wish to enter
22 an appearance?

1 All right. Thank you. Let the record
2 reflect there are no other appearances at today's
3 hearing.

4 JUDGE JONES: At this time, as in the previous
5 two days this week, I call for hearing the following
6 three consolidated docketed matters known as the air
7 and utility procurement dockets.

8 They are 05-0160, Central Illinois Light
9 Company d/b/a Ameren CILCO proposal to implement a
10 competitive procurement process by establishing
11 Rider PGS, etc.; 05-0161, Central Illinois Public
12 Service Company d/b/a Ameren CIPS, the same case
13 title in other respects; finally, 05-0162, Illinois
14 Power Company, same case title.

15 At this time may we have the appearances
16 orally for the record in these consolidated
17 matters.

18 MR. FLYNN: For the Ameren utilities, Chris
19 Flynn, Peter, Laura Earl from Jones Day and Ed
20 Fitzhenry.

21 MR. RIPPPIE: On behalf of Commonwealth Edison
22 Company, Glenn Rippie, Paul Hanzlik, Foley &

1 Lardner, LLP.

2 MR. ROBERTSON: On behalf of IIEC, Eric
3 Robertson, Conrad Reddick, and Ryan Robertson.

4 MR. LAKSHMANAN: For Dynegy, Inc., Joseph L.
5 Lakshmanan.

6 MR. STAHL: Midwest Generation, David Stahl and
7 Ronit Barrett.

8 MR. FOSCO: Staff of the Illinois Commerce
9 Commission, Carmen Fosco, John Reichart, John
10 Feeley, and Carla Scarsella.

11 MS. HEDMAN: On behalf of the People of the
12 State of Illinois, Susan Hedman and Susan Satter
13 from the Office of the Illinois Attorney General.

14 MR. BORDERS: Coalition of Energy Suppliers,
15 William A. Borders, Christopher J. Townsend,
16 DLA Piper Rudnick Gray Cray US LLP.

17 MS. KAREGIANES: Myra Karegianes of Karegianes
18 & Field on behalf of Constellation Energy
19 Commodities Group, Inc.

20 JUDGE JONES: Thank you.

21 Were there any other appearances to be
22 entered in the Ameren dockets by those either

1 physically present in Springfield or on the phone?

2 Let the record show there are not.

3 JUDGE WALLACE: We -- Judge Jones and I both
4 received motions in our respective dockets from the
5 Attorney General seeking to add a late exhibit I
6 believe essentially sponsored by Mr. Rose.

7 Do the parties wish to file a written
8 response or are you ready to file any response or do
9 you wish some more time to look this over since it
10 came in late yesterday while we were in the hearing?

11 MR. RIPPPIE: Your Honor, I'm prepared to argue
12 this now. We can also file a written response for
13 reasons which I would elaborate in an argument in
14 support of my objection.

15 I think this motion raises even more
16 serious considerations than the similar motion
17 yesterday.

18 MR. FLYNN: We agree with ComEd in that regard
19 with respect to the other docket. It raises very
20 serious concerns and goes far beyond what CUB still
21 seeks to do in our docket.

22 JUGDE WALLACE: All right. In terms of the CUB

1 motion from yesterday, I do not believe that was
2 filed in 0160 at this point. Mr. Rose is not here?

3 MS. SPICUZZA: He's not, Your Honor.

4 JUDGE WALLACE: All right. Then I will
5 continue to hold off ruling on the motion of ComEd.

6 JUDGE JONES: There may be other parties who
7 would want the opportunity to respond to the motion
8 that was filed yesterday, be it this morning orally
9 or later today or at some later point.

10 So we might want to see if there are any
11 other parties, the Commission Staff or other parties
12 who would like the opportunity now or later to
13 respond to that motion.

14 (Whereupon there was
15 then had an off-the-record
16 discussion.)

17 JUDGE JONES: Just briefly, Mr. Rippie, you
18 mentioned something to the effect of making an oral
19 response and then also filing a written response.

20 What did you have in mind there in terms of
21 how all that would occur relative to a ruling of
22 some sort?

1 MR. RIPPIE: Well, if Your Honors wished to
2 entertain the motion and decide it or at least
3 entertain argument on it today, I presume that
4 Ms. Hedman would offer the exhibit, we'd register
5 our objection, and I'd be prepared to argue it
6 briefly orally just as with the motion yesterday.

7 If you'd prefer written papers, we'd ask
8 leave to file those. And given the other demands on
9 all of the trial team, I'd ask that we be given, if
10 you wished written responses, at least until
11 postbusiness tomorrow to file those, three p.m.

12 MR. FLYNN: Well, I'll try not to make this too
13 complicated, but I have a concern with putting the
14 decision off after today that a written response
15 would require unless the AG is offering to bring
16 back Dr. Rose in the event that their motion is
17 ultimately granted and after a time we've had an
18 opportunity to review the document and prepare for
19 cross-examination on it and possibly submit our own
20 testimony in response to it.

21 I think we really need a decision soon so
22 that we know what it is we're dealing with.

1 JUDGE WALLACE: Ms. Hedman.

2 MS. HEDMAN: May I be heard --

3 JUDGE WALLACE: Yes, of course.

4 MS. HEDMAN: -- in both dockets on this point?

5 Dr. Rose prepares a performance review of
6 the electric power markets annually. It just so
7 happens that the report is prepared annually in
8 August.

9 We submitted the 2004 performance review in
10 connection with his testimony in all of the
11 dockets. His updated report, 2005 report is now
12 available. We made it available to counsel at the
13 earliest available date.

14 And to freeze this record in time in 2004
15 when more up-to-date information is available would
16 simply be absurd.

17 So we're offering this as a way of updating
18 the docket and updating the testimony and presenting
19 to the parties the information that Dr. Rose already
20 has at his disposal.

21 And we think that this document should
22 definitely be admitted.

1 JUDGE JONES: We could hold off a minute.
2 There's been a motion filed and it's been indicated
3 that there are likely to be responses, perhaps an
4 objection to it.
5 So I don't know that we need to hear any
6 further argument in support of the motion until we
7 actually hear what the arguments are, if any,
8 against it. Otherwise, we'll just have endless
9 rounds of argument on it.
10 But I guess we do need a little
11 clarification at this point. Mr. Flynn mentioned a
12 scenario where there would be the witness available
13 to be brought back, cross-examined after discovery,
14 if I understood that scenario, not that he was
15 proposing that -- I'm not sure -- and then the
16 opportunity provided for surrebuttal at that point.
17 So since that has been brought up on the
18 record, I think we may need to clarify that. And as
19 I -- if I heard Mr. Flynn correctly, he may have
20 been seeking some clarification from counsel for the
21 Attorney General on that possibility. I'm not
22 sure.

1 So we may see what counsel for the Attorney
2 General has to say since it has been brought up on
3 the record, but that also would potentially involve
4 ComEd and others.

5 So Mr. Rippie, are you interested in
6 similar clarification or --

7 MR. RIPPIE: Let me put it this way. I think
8 this motion is utterly unsupportable and should be
9 denied.

10 In the event, however, that it is granted,
11 I agree with Mr. Flynn that unless we have an
12 opportunity to first read it and then understand
13 what it says and potentially respond to it, we would
14 suffer prejudice.

15 I don't think all that procedure is
16 necessary for the reasons that I would state in my
17 argument.

18 JUDGE JONES: Mr. Flynn, what was it, if
19 anything, that you were seeking clarification on
20 from Ms. Hedman in that respect? I just want to
21 make sure we're clear on sort of what's on the
22 table.

1 MR. FLYNN: Actually, I was directing my
2 comments more to the bench and endorsing oral
3 argument on this motion now rather than written
4 responses and replies that might lead to a decision
5 several days from now.

6 I think if there is scheduling to be
7 done -- and frankly, I agree with Mr. Rippie, if we
8 lose the motion, we will request such scheduling.
9 We are better served taking on that scheduling now
10 as opposed to several days from now.

11 That was my only point, and I apologize
12 for being unclear.

13 JUDGE JONES: All right.

14 JUDGE WALLACE: All right. We'll just go
15 ahead and get started. When the -- we'll go ahead
16 with Mr. Rose or Dr. Rose. And when we get to that
17 exhibit, we'll take objections and responses on it
18 at that time.

19 Witnesses today, Rose, Salgo, Smith, and
20 LaCasse, if you're in the room, would you please
21 stand. Two out of four. Raise your right hands.

22 (Whereupon the witnesses

1 were sworn by Judge Wallace.)

2 JUDGE WALLACE: Thank you.

3 Ms. Hedman, you may begin with your first
4 witness.

5 MS. HEDMAN: Thank you, Your Honor.

6 I would like to call Dr. -- the People of
7 the State of Illinois call Dr. Kenneth Rose in
8 Dockets 05-0159 and in Consolidated Dockets 05-0160,
9 61, and 62.

10 Thank you.

11 (Whereupon there was then
12 had an off-the-record
13 discussion.)

14 DR. KENNETH ROSE
15 called as a witness on behalf of the People of the
16 State of Illinois, having been duly sworn, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. HEDMAN:

20 Q. Dr. Rose, please state your name and
21 business address for the record.

22 A. My name is Kenneth Rose, Ph.D. My business

1 address is P.O. Box 12246, Columbus, Ohio
2 43212-0246.

3 Q. And have you filed prefiled direct and
4 rebuttal testimony and associated exhibits in
5 Docket Number 05-0159?

6 A. Yes.

7 Q. Do you have before you your direct
8 testimony and associated exhibits which have been
9 marked as AG Exhibit 1.0 through 1.6 and filed via
10 e-Docket on June 8, 2005?

11 A. Yes.

12 Q. And do you have an additional exhibit that
13 updates your direct testimony which has been marked
14 as AG Exhibit 1.7 and filed via e-Docket as a
15 late-filed exhibit on September 7, 2005?

16 A. Yes, I do.

17 Q. And do you have before you your rebuttal
18 testimony and associated exhibits which have been
19 marked as AG Exhibits 5.0 through 5.2 and filed via
20 e-Docket on August 3, 2005?

21 A. Yes.

22 Q. Did you prepare this testimony and exhibits

1 or were they prepared under your direction?

2 A. Yes.

3 Q. Do you have any changes or corrections to
4 this testimony?

5 A. Yes, I do. I have minor corrections.

6 In Exhibit 1-2 that was part of the direct
7 testimony, there was some formatting changes that
8 were made to the document that were filed or
9 submitted in late August. That was mainly
10 formatting for clarification.

11 There are also some minor typographical
12 corrections. On page 25 of the direct testimony,
13 Footnote Number 23, that should read Exhibit 1.5,
14 not 1.4 as it states.

15 The second one, on page 28 of the direct
16 testimony, Footnote 24 should read Exhibit 1.6.

17 And the last one is on page 32 of the
18 direct testimony Exhibit 1. -- excuse me --
19 Footnote 26 should read Exhibit 1.6.

20 Those are updates to the direct testimony.

21 Q. Do you have any changes or corrections to
22 your rebuttal testimony?

1 A. Yes, I do. There are two again minor
2 corrections.

3 The first one is on page 9, line 11, the
4 last word to, t-o, should be deleted.

5 On page 12 on line 9, the words at the
6 beginning of the line "is it" should be transposed
7 so it should read, "It is possible."

8 And that's it.

9 Q. With these corrections, if you were asked
10 the same questions today that you addressed in this
11 direct and rebuttal testimony, would your answers be
12 the same as when you prefled the testimony and
13 exhibits?

14 A. Yes.

15 Q. Are your answers to this testimony true and
16 correct to the best of your knowledge, information,
17 and belief?

18 A. Yes.

19 MS. HEDMAN: Judge Wallace, I move the
20 admission of AG Exhibits 1.0 through 1.7 and
21 Exhibits 5.0 through 5.2 in Docket Number 05-0159.

22 JUDGE WALLACE: Any objection?

1 MR. RIPPIE: Your Honor, we object to
2 Exhibit 1.7. There is no objection to the remaining
3 exhibits.

4 JUDGE WALLACE: All right. I will admit the
5 other exhibits and then we'll deal with 1.7.

6 So at this point AG Exhibits -- oh, are
7 Exhibits 1.0, 1.2, and 5.0, they have been corrected
8 and filed on e-Docket?

9 MS. HEDMAN: 1.2 has been corrected and filed
10 on e-Docket. It was filed with our exhibit list.
11 The typographical errors that he corrected have not
12 been filed, but I can put those into a letter and
13 file them on e-Docket.

14 JUDGE WALLACE: Thank you.

15 AG Exhibits 1.0 Corrected, 1.1, 1.2
16 Corrected, 1.3, 1.4, 1.5, 1.6, 5.0 Corrected, 5.1,
17 and 5.2 are admitted.

18 (Whereupon AG Exhibits 1.0
19 Corrected, 1.1, 1.2 Corrected,
20 1.3, 1.4, 1.5, 1.6, 5.0 Corrected,
21 5.1, and 5.2 were admitted into
22 evidence in Docket 05-0159.)

1 MS. HEDMAN: Thank you, Your Honor.

2 The following questions relate to Dockets
3 05-0160, 61, and 62 Consolidated.

4 Q. Dr. Rose, please state your name and
5 business address for the record.

6 A. My name is Kenneth Rose, Ph.D. My business
7 address is P.O. Box 12246, Columbus, Ohio,
8 43212-0246.

9 Q. And have you filed prefiled direct and
10 rebuttal testimony and associated exhibits in
11 Docket Numbers 05-0160, 61, and 62?

12 A. Yes, I have.

13 Q. Do you have before you your direct
14 testimony and associated exhibits which have been
15 marked as AG Exhibits 1.0 through 1.3 and filed via
16 e-Docket on June 15, 2005?

17 A. Yes, I do.

18 Q. And do you have before you an additional
19 exhibit that updates your direct testimony which has
20 been marked as AG Exhibit 1.4 and filed via e-Docket
21 as a late-filed exhibit on September 7, 2005?

22 A. Yes, I do.

1 Q. And do you have before you your rebuttal
2 testimony which has been marked as AG Exhibit 5.0
3 and filed via e-Docket on August 10, 2005?

4 A. Yes, I do.

5 Q. Did you prepare this testimony and exhibits
6 or were they prepared under your direction?

7 A. Yes.

8 Q. Do you have any changes or corrections to
9 this testimony?

10 A. Again, there are no changes besides the new
11 exhibit in the direct testimony. The -- there's one
12 correction in the rebuttal testimony on page 10.
13 Again, a typographical typer error.

14 On page 10, line 21, the word "all" should
15 be changed to "most." That's the only change.

16 Q. With this correction, if you were asked the
17 same questions today that you addressed in this
18 direct and rebuttal testimony, would your answers be
19 the same as when you prefiled the testimony and
20 exhibits?

21 A. Yes.

22 Q. Are your answers in this testimony true and

1 correct to the best of your knowledge, information,
2 and belief?

3 A. Yes.

4 MS. HEDMAN: Judge Jones, I'd move the
5 admission of AG Exhibits 1.0 through 1.4 and
6 Exhibit 5.0 in Docket numbers 05-0160, 61, and 62
7 Consolidated.

8 JUDGE JONES: Any objections to those?

9 MR. FLYNN: Objection to Exhibit 1.4. No
10 objection to the remainder.

11 JUDGE JONES: Anybody else? Let the record
12 show no response.

13 Regarding the change to the rebuttal
14 testimony, has any filing been made that identifies
15 that change at this point?

16 MS. HEDMAN: No, it hasn't. We will submit that
17 on e-Docket promptly.

18 JUDGE JONES: What do you intend to file in
19 that regard?

20 MS. HEDMAN: We would file a corrected exhibit,
21 a corrected Exhibit 1.0 -- or excuse me -- Corrected
22 Exhibit 5.0.

1 JUDGE JONES: And so the intent would be that
2 the Corrected Exhibit 5.0 will take the place of the
3 earlier version both on e-Docket?

4 MS. HEDMAN: Yes.

5 JUDGE JONES: Let the record show that the
6 following exhibits sponsored by Dr. Rose are
7 admitted.

8 AG Exhibit 1.0, direct testimony filed
9 June 15, 2005; AG Exhibit 1.1, CV filed June 15,
10 2005; AG Exhibit 1.2 filed June 15, 2005; AG
11 Exhibit 1.3, presentation summary filed June 15,
12 2005, those are admitted as they appear on
13 e-Docket.

14 (Whereupon AG Exhibits 1.0,
15 1.1, 1.2, and 1.3 were admitted
16 into evidence in Docket 05-0160, 0161,
17 0162.)

18 JUDGE JONES: 1.4 has been offered. There are
19 objections. No ruling will be made at this specific
20 point in time.

21 Exhibit 5.0 is going to be the subject of a
22 corrected exhibit filing. Leave is given to do

1 that. It will be deemed admitted into the
2 evidentiary record after that filing has been made.

3 Does that serve your purposes on that one?

4 MS. HEDMAN: Thank you, Your Honor.

5 JUDGE JONES: Okay. Thank you.

6 MS. HEDMAN: Thank you.

7 This witness is available for
8 cross-examination in Dockets 05-0159 and
9 Dockets 05-0160, 61, and 62.

10 JUDGE WALLACE: All right. I guess at this
11 point, based upon our earlier conversations,
12 Mr. Rippie, you stated an objection to AG
13 Exhibit 1.7. Do you wish to elaborate?

14 MR. RIPPIE: Although I hope it won't be too
15 elaborate. Yes, Your Honor. Thank you very much.

16 Yesterday late in the afternoon the
17 Attorney General filed a two-page motion seeking
18 leave to admit today a 91-page exhibit from Dr. Rose
19 and other an individual that contains a vast
20 quantity of data, charts, tables, analyses, and the
21 like.

22 This document is not an update as

1 Ms. Hedman described it. It is in fact the next in
2 a series of reports that the witness does annually.

3 There are three reasons that this motion
4 should be denied.

5 First, it is contrary to the Commission's
6 rules of procedure and the procedural order in this
7 case. As with the motion yesterday, there was a
8 time for submitting testimony in this case that was
9 established to be fair to all parties.

10 That time has long passed. Because it has
11 passed, we would have no opportunity to conduct
12 either discovery or to respond to surrebuttal to
13 this exhibit, which is very much in the nature of
14 testimony.

15 Other witnesses have not been permitted to
16 submit new conclusions, new data, new studies, and
17 new analyses. There must be an end at which -- an
18 end to the time at which testimony is submitted.
19 And I submitted under Your Honor's orders and the
20 Commission's rules that that time has passed.

21 Second, the motion is unreasonable.

22 As I noted, this was provided less than 20 hours

1 prior to the time we're sitting here now. I can
2 tell you this is the first time in my career that I
3 would be asked to cross-examine on an exhibit that I
4 have not even had an opportunity to fully read.

5 Compounding the unfairness to us is the
6 fact that this exhibit was completed by the witness
7 on August the 23rd, and it was the subject of a data
8 request response that we -- or a data request that
9 we had outstanding.

10 Yet we did not receive this report in
11 response to the data request until the day before
12 yesterday. And even then there was no indication
13 until yesterday that it would be offered.

14 Thirdly, it's highly prejudicial. As I
15 indicated, there are 91 pages of report. It
16 contains a number of new claims and conclusions, and
17 we will have no opportunity to conduct discovery
18 nor, more importantly, for our witnesses to analyze
19 this material and to respond.

20 A brief scan of the report by our witnesses
21 last night indicates that there are a number of
22 substantive topics that if this report is allowed

1 into evidence we would have responded to.

2 I will in closing indicate to Your Honors
3 that I am simply not prepared nor could I be to
4 cross-examine on this exhibit today. The volume of
5 the exhibit and the nature of the exhibit make that
6 impossible.

7 Ms. Hedman's statement that the exhibit is
8 interesting has nothing to do with either of my
9 three objections. They're not based on relevance.
10 They are rather based upon the nature of the exhibit
11 and the fundamental fairness that this process
12 should exhibit.

13 Motion should be denied. Thank you.

14 MR. FLYNN: We echo Mr. Rippie's remarks and
15 would simply like to add that contrary to whatever
16 impression counsel for the AG may attempt to create,
17 this document is not a mere data dump.

18 It doesn't simply present data that the
19 witness compiled. It interprets, assesses, and
20 offers opinions with respect to the data. It is
21 testimony. It's not simply in the nature of
22 testimony. When offered here, it is new testimony.

1 If you look at the front page of the
2 report, there is a proviso at the bottom that the
3 views expressed here are those of the authors and do
4 not necessarily reflect those of the Virginia
5 Commission.

6 Yes. That's exactly right. These are the
7 views of the author, the witness who's here now.
8 This is opinion. There is data in this report which
9 the AG now claims is critical to get into the
10 record.

11 We have not had an opportunity to study the
12 report in detail, but it appears that the critical
13 price data was price data through June 30th of this
14 year with utterly no explanation of why it's
15 critical on September 8th to give us price data
16 through June 30th.

17 No discussion in the motion or orally of
18 what's been going on for the last two and a half
19 months that rendered the witness unable to present
20 this critical data which was in his possession.

21 And again, as Mr. Rippie notes, while the
22 motion claims that counsel for the AG came into

1 possession of this document on September 6th, the
2 motion is very carefully worded and the document
3 itself was dated August 23rd.

4 The motion should be denied. It is
5 fundamentally unfair and we are not prepared to
6 proceed at this time with respect to this witness on
7 that document.

8 JUDGE JONES: Just to make sure that no one
9 else has any argument to make on that before we get
10 back to Ms. Hedman for her reply, any other parties
11 have any responses to make? Okay. They do not.

12 Ms. Hedman.

13 MS. HEDMAN: Thank you.

14 I'm frankly surprised that counsel for
15 ComEd and Ameren are so put upon by our offering of
16 this exhibit. Our intent was not to burden them or
17 to burden the record, but to clarify and update the
18 record so that this proceeding and the decisions in
19 this proceeding could be made on the most up-to-date
20 information available.

21 This was presented in an answer to a data
22 request as soon as it was available to us. And on

1 reflection and recommendations of co-counsel, it was
2 offered into the record merely to clarify and
3 facilitate cross-examination of this witness.

4 It should be admitted for that reason, and
5 it -- there's absolutely no reason why it should not
6 be admitted.

7 JUDGE WALLACE: Thank you.

8 All right. Considering the objections, the
9 objection to admission of AG Exhibit 1.7 is
10 sustained and it will not be admitted.

11 JUDGE JONES: Let the record show the same
12 ruling is made in the Ameren dockets.

13 Just as it's a difficult issue and the
14 ruling does not go to the potential relevance of the
15 document, the other factors that come into play was
16 the document was distributed yesterday afternoon as
17 an intended exhibit in this matter.

18 It was -- it was late yesterday afternoon.
19 The document does bear a date of August 23, 2005. I
20 don't take issue with the Attorney General on the
21 timing. They indicated that the date they got it.
22 I'll take them at their word on that, but the

1 document has been out there for some period of
2 time.

3 In reviewing the document, it's 91 pages
4 long. It contains a very substantial amount of
5 information and expert analysis on the part of this
6 expert witness. And of course, that cuts both
7 ways.

8 The problem being with the timing here, it
9 raises serious issues in terms of discovery,
10 cross-examination preparation, possible surrebuttal
11 on the part of the utilities, etc.

12 I don't necessarily agree with every
13 comment that counsel for the utilities made. I
14 certainly don't disagree with some of the comments
15 that Ms. Hedman made.

16 But on balance, it's difficult to see how
17 one could justify admitting this document at this
18 late point given the nature of it.

19 One reason cited by Ms. Hedman -- and
20 again, do not take issue with this reason was it's
21 being offered at least in part to clarify and
22 facilitate the cross of the witness.

1 I just want to make sure this ruling is
2 clear that if parties believe that their cross-
3 examination of this witness would be facilitated by
4 reference to this document, then this ruling is not
5 extended to preclude that if -- and basically I'm
6 speaking to those that have addressed this motion.

7 If counsel for Commonwealth Edison or the
8 Ameren Companies wish to use the document for the
9 clarification of and facilitation of cross because
10 in their view that would do so, then we will deal
11 with that at that time it arises.

12 That's not a blanket approval that that
13 would be permitted. My point being that I do not
14 want the ruling to be read to mean that that is
15 prohibited.

16 We have not reached that issue of what
17 those parties that will be conducting cross have
18 indicated or will be intending to do. And I think
19 it would be premature to speak any further to that.

20 I think one argument was made was that it
21 would be beneficial to get the ruling -- get the
22 matter argued this morning and get the ruling made

1 so the parties could have the benefit of that ruling
2 and move forward with the examination,
3 cross-examination of this witness.

4 I think those points were well taken. And
5 so that's what we've attempted to do this morning,
6 to entertain the arguments from the parties and make
7 the ruling.

8 That concludes the ruling. Thank you.

9 MS. HEDMAN: Thank you, Your Honor. If I may,
10 I would like to clarify one fact to avoid any
11 prejudice to Dr. Rose.

12 There has been a suggestion that since the
13 report was completed on August 23rd, it should have
14 been provided earlier.

15 I would like to ask Dr. Rose whether that
16 was the date the report was completed and if it was
17 released by the Virginia Commission at a later
18 date.

19 Would that be appropriate?

20 JUDGE JONES: And the intent of that would just
21 be to clarify that point?

22 MS. HEDMAN: To clarify that point. There is a

1 suggestion based on the comments of counsel that
2 somehow we sat on our hands or he sat on his hands.

3 I believe this document is the property of
4 the Virginia Commission, and I would like to make
5 sure that the release date is on the record.

6 JUDGE JONES: Any objection to that
7 clarification or those questions for the purpose of
8 that clarification?

9 MR. FLYNN: I guess I don't see the point, but
10 I won't object.

11 MR. RIPPKE: Same.

12 JUDGE JONES: All right. Go ahead.

13 MS. HEDMAN: Q. Dr. Rose, did you complete
14 this report on August 23rd?

15 A. Yes. That's the date it was submitted to
16 the Virginia State Corporation Commission.

17 Q. And it became publicly available sometime
18 after that?

19 A. The release date when they -- they submit
20 it to the governor of Virginia and Virginia General
21 Assembly on September 1st.

22 And it was posted after the 1st after those

1 parties received their copies and becomes a public
2 document. So September 1st is actually is the
3 release date for the report.

4 Q. And do you know if point of fact it was
5 actually posted?

6 A. Yes. It was posted on the Virginia State
7 Corporation Commission web site now.

8 Q. Okay. And do you know point of fact
9 whether it was posted before the Labor Day weekend?

10 A. I believe just before, yes. And I had my
11 copy over the weekend is when I downloaded it and
12 sent it to you over the weekend.

13 MS. HEDMAN: Thank you.

14 And then finally, I'd like to reserve my
15 right to make an offer of proof on this document
16 after cross-examination.

17 JUDGE JONES: Any comments on that?

18 MR. RIPPIE: Well, only to the extent that if
19 counsel for the Attorney General wishes to make an
20 offer of proof, then we may have an offer of proof
21 as well, which I doubt in this case for the reasons
22 that I stated would involve any actual

1 cross-examination of the witness, but rather, just a
2 summary of what we think evidence might show if we
3 had had access to the material.

4 JUDGE WALLACE: All right. Thank you. All
5 right.

6 MR. FLYNN: Just we'd like the same
7 opportunity.

8 JUDGE JONES: All right. Thank you.

9 MR. FLYNN: In our parallel universe.

10 JUDGE WALLACE: Where sunny optimism reigns?

11 Why don't we go ahead with cross. Does
12 anyone wish to lead off?

13 MR. STAHL: Judge Wallace, I guess I will lead
14 off if it's all right.

15 JUDGE WALLACE: Thank you, Mr. Stahl.

16 CROSS-EXAMINATION

17 BY MR. STAHL:

18 Q. Good morning, Dr. Rose.

19 A. Morning.

20 Q. My name is David Stahl. I'm one of the
21 lawyers representing Midwest Generation in this
22 case.

1 And my cross-examination will be in both
2 dockets, both the ComEd and Ameren docket. To the
3 extent I refer to your testimony, however, I will be
4 referring to the testimony that was filed in the
5 ComEd docket, 0159.

6 And let me make it clear at the outset,
7 Dr. Rose, that I have not had an opportunity to
8 review this report that was the subject of the
9 argument that we've just been listening to.

10 And my cross-examination will not depend at
11 all on anything that's in that report since I have
12 not had an opportunity to absorb anything that's in
13 that report.

14 Dr. Rose, tell me what you know about
15 Midwest Generation?

16 A. I understand that Midwest Generation bought
17 their coal plants, a number of coal plants from the
18 Commonwealth Edison Company or its successors, the
19 Exelon Company.

20 I don't recall what it was called at that
21 point. It may have been Unicom or Exelon at that
22 point and now is the owner of those plants in

1 Northern Illinois. And it operates in the wholesale
2 market.

3 Q. Do you know when that purchase transaction
4 was consumated?

5 A. No, I don't know exactly.

6 Q. Do you know which particular coal plants it
7 was that were purchased from either Unicom or ComEd?

8 A. The exact plants, no. I just remember that
9 it was the bulk of the coal plants that Commonwealth
10 Edison owned.

11 Q. Do you know if there were any plants
12 purchased other than coal plants?

13 A. There may have been some gas units involved
14 also, but I think it was mostly coal.

15 Q. Are you familiar with the unit formerly
16 known as the Collins unit?

17 A. That sounds familiar, yes.

18 Q. Do you know what kind of unit that is?

19 A. No.

20 Q. Do you know if that was part of the
21 purchase by Midwest Gen from ComEd?

22 A. No, I don't.

1 Q. Do you know if that unit is still in
2 operation?

3 A. No.

4 Q. Can you identify by name any of the coal
5 plants that Midwest Gen now owns that were purchased
6 from ComEd?

7 MS. HEDMAN: Objection. I fail to see the
8 relevancy of this line of questioning to Dr. Rose's
9 testimony.

10 MR. STAHL: Well, I think the relevancy goes to
11 the question of what does Dr. Rose really know about
12 the characteristics of what he refers to as the
13 Northern Illinois market.

14 JUDGE JONES: Just a minute till there's a
15 ruling.

16 JUDGE WALLACE: We'll let it in.

17 THE WITNESS: At one point I have the EIA data
18 that outlined that. I don't think I have that with
19 me, but I have looked at that information. And in
20 there it contains the information of who owns what
21 plants and which plants they refer to.

22 Some of the parties to the case have also

1 put that information in, Dr. Sibley in particular I
2 think has listed who owned the generation and which
3 units.

4 I may have that with me. I think I might
5 have. I'm not sure. I have it electronically that
6 specifies which plants. So early on in this process
7 I did look at that. My memory is not good enough to
8 remember every unit and every name.

9 MR. STAHL: Q. I understand. It's not
10 INTended to be a memory test.

11 Is it fair to say, though, that whatever
12 you know about those plants and their
13 characteristics is information you derived either
14 from the EIA reports you referred to or from
15 Dr. Sibley's testimony?

16 A. And others' testimonies.

17 Q. What others?

18 A. Well, the testimony that was submitted by
19 ComEd I think also identified some of the units at
20 times. But I think the most complete list was
21 probably in Dr. Sibley's, if my memory serves right.

22 Q. Are you familiar with the Kincaid unit?

1 A. Yes.

2 Q. Who owns that? Do you know?

3 A. I believe you do now.

4 Q. Midwest Gen.

5 What about the state line? Are you

6 familiar with that unit?

7 A. The names are familiar, but I'd have to

8 look at the document to see.

9 Q. Do you believe that Midwest Gen owns state

10 line as well?

11 A. I don't know.

12 Q. What is the total installed capacity of the

13 coal units presently owned by Midwest Gen? Do you

14 know?

15 Are you looking it up on a document?

16 A. Yes. I may have it with me.

17 Q. All right. So you are unable to answer the

18 question without referring to a document. Is that

19 correct?

20 A. I don't have it in front of me.

21 Q. You don't have it. All right.

22 Dr. Rose, you referred a couple of points

1 in both your direct testimony and your rebuttal
2 testimony to the FTC Department of Justice
3 antitrust guidelines, do you not?

4 A. The Department of Justice, not FTC.

5 Q. Okay.

6 A. And FERC.

7 Q. Yeah. I'm talking about the merger
8 guidelines, the horizontal-merger guidelines.

9 A. That's the DOJ's documents.

10 Q. All right.

11 JUDGE WALLACE: The what?

12 MR. STAHL: Department of Justice, DOJ.

13 Q. Ou're familiar enough with those guildines
14 to discuss them a little bit with me?

15 A. Yes.

16 Q. Okay. You're aware that in those
17 guidelines there are tests for how a relevant
18 geographic market will be determined?

19 A. Yes.

20 Q. You have not applied that test to any of
21 the geographic markets that you discuss in your
22 testimony in this case, have you?

1 A. Not specifically as a geographic market.

2 What I specifically said was that the --

3 and what I believe is that the electricity markets

4 are such that you have to determine that and that

5 that can change as conditions change in the system

6 and maybe even by day, by season, and as load

7 changes and other things happen and new power plants

8 are built.

9 Q. Are you finished?

10 A. Yes.

11 Q. You referred a couple points in your

12 testimony to the Northern Illinois market or

13 Northern Illinois markets. Is that correct?

14 A. That's right.

15 Q. You are not in a position to say that

16 Northern Illinois market is a relevant geographic

17 market --

18 A. No.

19 Q. -- under the antitrust guidelines, are you?

20 A. No.

21 The point was --

22 Q. Excuse me.

1 A. I'm sorry. I thought you were finished.

2 Q. I think it's a yes-or-no question. And I
3 think you answered no.

4 A. I'm saying, no, it's not. But I think it
5 requires some clarification because the confusion I
6 think is -- and I've answered this, I think, in some
7 of the data requests is to say Northern Illinois
8 market is not to say that's the market, but Northern
9 Illinois is in the market, not the market.

10 Q. Northern Illinois is in what might be a
11 relevant geographic market. Is that what you're
12 saying?

13 A. And that could change. There may be that
14 transmission constraints would mean that that is the
15 relevant market and at other times the entire PJM
16 region may be the relevant market or some
17 combination of --

18 Q. Dr. Rose, I don't want to discourage you
19 from saying what you need to to answer my questions,
20 but I really do think and I would ask the Law Judges
21 to direct Dr. Rose to simply answer my question and
22 if there's any explanation necessary, I'm sure it

1 can be done on redirect.

2 JUDGE JONES: Well, just as long as anything
3 you're looking for from here is not intended to be
4 interpreted by the witness as an order to give a
5 yes-or-no answer to every question that counsel
6 would like to hear a yes-or-no answer to.

7 MR. STAHL: No.

8 JUDGE JONES: In other words, we always urge
9 our witnesses to answer the questions that are
10 asked. Some are more complicated than others.

11 But the concise answers are appreciated,
12 especially if the questions are ones that can be
13 answered in that manner, though I do not intend that
14 comment to be directed any more to Dr. Rose than any
15 of the other witnesses in this proceeding.

16 MR. STAHL: Okay.

17 Q. R. Rose, let's -- let me ask you a
18 variance on the preceding question.

19 Whatever the relevant geographic market is
20 for antitrust purposes, it would be calculated or
21 defined under the guidelines you do not know. Is
22 that correct?

1 MS. HEDMAN: Objection. Dr. Rose's testimony
2 clearly says that he is not using Northern Illinois,
3 those two words in any sense to define a geographic
4 region or in reference to the antitrust guidelines.

5 And if Mr. Stahl wishes to expand his
6 testimony to something else, I think that's entirely
7 inappropriate. This is clearly beyond the scope.

8 MR. STAHL: Okay. Fine. Well, if it's a
9 stipulation that Northern Illinois is not being
10 referred to as any type of relevant geographic
11 market or antitrust for competitive purposes, that's
12 fine with me.

13 And I think I just heard counsel so state.
14 So I can move on.

15 MS. HEDMAN: We are not making any stipulation.
16 We are simply not speaking to that issue.

17 MR. STAHL: Well, then I think I'm entitled to
18 ask the witness the question.

19 MS. HEDMAN: Your Honor, I disagree. If the
20 witness isn't addressing a question, counsel can't
21 take a position on that question and ask us to
22 stipulate to it or require the witness to speak to

1 that question.

2 JUDGE JONES: Well, sort of start with the
3 stipulation piece first.

4 If there were a stipulation, then so be it,
5 but there is not. So we won't require anybody to
6 stipulate to something that they're not intending to
7 do.

8 In terms the relevancy objection, what is
9 -- where are you going with that line of questioning
10 and how does that relate to, in your opinion, to
11 this witness' testimony?

12 MR. STAHL: Well, this witness has made
13 statements about a so-called Northern Illinois
14 market. And I think it's been the position of -- I
15 won't speak for ComEd in this case or Ameren in
16 their case.

17 But I believe that their position is and
18 certainly Midwest Gen's position in any event that
19 Northern Illinois is not an appropriate market
20 within which to examine any competitive effects.

21 JUDGE JONES: Are you saying this witness has
22 made statements to that effect?

1 THE WITNESS: He has made statements concerning
2 conditions in Northern Illinois markets.

3 JUDGE JONES: In his testimony?

4 THE WITNESS: Yes.

5 JUDGE JONES: Do you have some citations
6 there?

7 MR. STAHL: Sure.

8 For example, page 15 of his direct
9 testimony he's asked whether the transmission system
10 is adequate for new market entrants seeking to
11 import electricity into Northern Illinois.

12 The question on page 17 also refers to
13 customer demand for electricity in Northern
14 Illinois.

15 MS. HEDMAN: Excuse me. Could you give me that
16 citation again?

17 MR. STAHL: Page 17, question on page 17, lines
18 7 and 8.

19 MS. HEDMAN: May I note that this isn't the
20 witness' testimony.

21 These are questions posed to the witness,
22 and this is northern Illinois, small n Illinois,

1 capital I. This is not the Northern Illinois of
2 both capital letters, for instance, ComEd witness
3 Naumann uses where the references to Northern
4 Illinois that one sees in other witnesses like
5 Nica.

6 This is simply a question about a place.
7 It is not a reference to any specific geographic
8 region.

9 MR. RIPPIE: I just -- I have to note you will
10 not find the word Northern capitalized in
11 Mr. Naumann's testimony except when it begins a
12 sentence.

13 MS. HEDMAN: That is an inaccurate statement,
14 Your Honor.

15 JUDGE JONES: All right. Well, in any event,
16 let me proceed with the ruling with this, if that's
17 all right.

18 MR. STAHL: I can find other references.

19 JUDGE JONES: I'm sorry. I started to proceed
20 with the ruling, so if you don't mind, I'd like to
21 continue with that rather than be interrupted.
22 Thank you.

1 Well, this witness has testified as an is
2 expert. I think that's clear. And I think that
3 there are references to the witness' testimony.

4 I believe the question and answer are part
5 of the testimony, not just the answer. It's
6 somewhat a matter of interpretation of what the
7 witness is testifying to in the context of this
8 discussion has gone the last couple minutes.

9 But all things considered, I believe it's a
10 reasonable line of questioning given the witness'
11 testimony and the fact he is testifying as an expert
12 in this matter.

13 MR. STAHL: And let me re-ask the question with
14 specific reference to the witness' testimony and not
15 a question on the testimony so there's no
16 misunderstanding.

17 Q. Dr. Rose, please take a look at page 33 of
18 your direct testimony, and at line 9 of that
19 testimony you say, quote, Northern Illinois markets
20 are highly concentrated.

21 You say that in your testimony, do you not?

22 A. Yes.

1 Q. And when you say northern Illinois markets,
2 understanding that only Illinois is capitalized, you
3 are not intending by that to imply that Northern
4 Illinois is a relevant geographic market for
5 purposes of any kind of anticompetitive analysis,
6 are you?

7 A. No, I'm not.

8 Actually, this would clarify it, if I may
9 add. In my rebuttal testimony on page 13, because
10 of the responses in the rebuttal testimony, I
11 specifically deal with this issue on page 13, the
12 first question on that page about the definition of
13 relevant market.

14 And just to clarify that, just to point out
15 that this is a specific term which is not used in
16 the direct testimony as you just indicated.

17 Q. Okay. Very good. I appreciate that
18 clarification.

19 You are not contending anywhere in either
20 your direct testimony or your rebuttal testimony
21 that Midwest Generation has exercised any form of
22 market power, are you?

1 A. No.

2 Q. And you have not done or presented to this
3 Commission any analysis that suggests that in the
4 years 2007 to 2011 that Midwest Gen would have
5 market power in any market that might be considered
6 a relevant geographic market for antitrust purposes,
7 are you?

8 A. I did not make that specific claim. I
9 suggested a study be made so that we know.

10 And that was a major conclusion of both the
11 direct testimony and the rebuttal testimony that
12 such an analysis ought to be done before we
13 proceed. But I did not make that claim.

14 Q. Okay. And how would you do that analysis?

15 A. I believe a structural analysis is needed.
16 I didn't see that in any of the testimony beyond
17 simply looking at HHIs and concentration measures,
18 that we needed to look at just the transmission
19 constraints of the generation, the barriers to entry
20 the way the system is currently configured,
21 determining relevant geographic markets which I
22 suspect change over time.

1 And that would all be part of the anaylsis.

2 Q. And you haven't identified any specific
3 transmission constraints, have you, at this point?

4 A. No, not in specific.

5 MR. STAHL: Thank you. I have nothing further.

6 JUDGE JONES: Thank you, Mr. Stahl.

7 JUDGE WALLACE: Mr. Fosco.

8 MR. FOSCO: Staff has no questions.

9 JUDGE WALLACE: Mr. Robertson?

10 MR. ROBERTSON: No.

11 (Whereupon there was then
12 had an off-the-record
13 discussion.)

14 JUDGE WALLACE: All right, then.

15 MR. RIPPIE: Yesterday I was being electrons.
16 Today I'm going to be a positive proton and go
17 first.

18 CROSS-EXAMINATION

19 BY MR. RIPPIE:

20 Q. Dr. Rose, my name is Glenn Rippie. I
21 represent Commonwealth Edison in this case. I'm
22 going to echo something Mr. Stahl said.

1 Unless I specifically ask you a question
2 with respect to the document that was marked for
3 identification as Attorney General Exhibit 1.7,
4 please do not presume that I'm asking you about it.

5 And if you intend to consult it as part of
6 your answer, please let me know that before you do
7 that. Can you do that for me?

8 A. Yes.

9 Q. I'm going to very briefly ask you a couple
10 of follow-up questions about your qualifications and
11 professional experience.

12 Am I correct that you are not a
13 Professional Engineer. Right?

14 A. That's correct.

15 Q. You have no engineering training at all.
16 Right?

17 A. Outside of classroom, no, I haven't.

18 Q. You have never acted as a competitive
19 electric procurement auction designer, have you?

20 A. No.

21 Q. And you have never acted as a competitive
22 electric procurement auction manager. Is that also

1 true?

2 A. That's true.

3 MS. HEDMAN: Objection. The witness isn't
4 testifying on auction design. I don't see why these
5 questions are relevant.

6 MR. RIPPIE: The witness discusses at great
7 length the implications of the state of markets on
8 different modes of electric procurement with regard
9 to those markets.

10 I'm establishing very briefly his
11 background or lack thereof. I have two more
12 questions on the subject of his background. I think
13 that's quite reasonable.

14 MS. HEDMAN: I believe the focus of the
15 testimony is on the condition of the markets.

16 JUDGE WALLACE: Well, I think he's entitled to
17 test Dr. Rose's background. So go ahead.

18 MR. RIPPIE: Q. Have you ever served as a
19 transmission system planner for any utility, RTO,
20 ISO, or transmission operator?

21 A. No.

22 Q. And is it also true that you have never

1 been part of the team responsible for the
2 construction, planning, installation, or permitting
3 of any new electric transmission facility?

4 A. No.

5 Q. Dr. Rose, is it fair to say that you are
6 not opposed to workable competitive markets in
7 electricity?

8 A. That's fair, yes.

9 Q. And is one of the reasons that you are not
10 opposed to those markets that you believe that they
11 can promote efficient pricing and efficient
12 allocation of resources?

13 A. Ideally the market is better than
14 regulation if you have a competitive market.

15 Q. And just to be clear, it is your testimony
16 what we should expect is a workably competitive
17 market because, as you testify in your direct, you
18 reference the textbook definitions of a perfectly
19 competitive market?

20 A. My concern is we may not even fit the
21 definition of a workably competitive. I didn't use
22 that term, but I understand the meaning. I'm

1 concerned that we may not even have a workable. We
2 may have some form of imperfect markets like --

3 Q. Dr. Rose, I didn't ask you what we had. I
4 asked you the goal was to get to a workably
5 competitive market, not a perfect market?

6 A. The goal is to get to a at least workably
7 competitive market.

8 Q. Fair enough.

9 Now, would you also agree that if we had a
10 workably competitive market, customers could benefit
11 by virtue of that efficiency and lower prices?

12 A. If you had a workably competitive market.

13 Q. Now, would you agree with me as well that
14 in evaluating market-power issues in electricity,
15 you will want to consider the physical scale of a
16 market as well as its scope in terms of both the
17 participants and the products being offered?

18 A. Yes. You have to establish that, as an
19 earlier line of questioning indicated. We didn't
20 talk about the product market, but that's also --

21 Q. Do you know how many unaffiliated entities
22 sold electricity last year in PJM?

1 A. Unaffiliated entities, I'm not sure what
2 you mean. You mean unaffiliated with the utility?

3 Q. Good clarification.

4 What I mean is by unaffiliated with each
5 other. That is, how many different unaffiliated
6 sellers there were in PJM last year?

7 A. I don't know the exact number, but it's a
8 lot.

9 Q. Several hundred? Would you agree?

10 A. It's probably in the hundreds at least.

11 Q. Now, would you also agree that a
12 competitive market is usually defined as a market
13 that has many buyers and sellers, relatively easy
14 entry, and readily available product information?

15 A. It depends on the relative market. The
16 large number of buyers that you have may be
17 relatively small players in the physical-generation
18 market.

19 And the market power is not in the
20 bilateral arrangements or in the financial
21 arrangement, but in the generation market where
22 there may be the kinds of concentration that my

1 testimony refers to.

2 Q. Going to ask you to turn to page 6 of your
3 direct testimony, please, and take a look at lines
4 13 to 16.

5 A. Right. That's again the ideal of many
6 buyers and sellers to come --

7 Q. No question pending yet.

8 A. Okay. I'm sorry.

9 Q. Am I correct that you testify there that a
10 competitive market is usually defined as a market
11 that have many buyers and sellers, relatively easy
12 entry into the marketplace sellers, readily
13 available public information for buyers, and a
14 market price that no buyer or seller is equally
15 significantly affected?

16 A. Sure.

17 Q. And you intended that testimony to refer to
18 the electricity market. Right?

19 A. I intended that testimony to set the
20 standard for what a competitive market is.

21 Q. Fair enough.

22 Do you know how many unaffiliated entities

1 in PJM last year sold more than a thousand megawatts
2 of power on --

3 A. As a generator or as a reseller?

4 Q. Either.

5 A. It's probably in the hundreds again.

6 Q. Do you know how many different unaffiliated
7 generator owners or other power marketers submitted
8 supply bids in a PJM market for resources that were
9 deliverable to northern Illinois, small n?

10 A. I don't know. That's probably a smaller
11 number, but large. Dozens, maybe.

12 Q. You wouldn't be surprised if it was over a
13 hundred?

14 A. No.

15 Q. Do you know how many unaffiliated
16 generators offered capacity in the PJM capacity
17 markets last year?

18 A. Well, as in having their own capacity,
19 there's just -- actual owners or are you counting
20 resellers of capacity as well?

21 Anybody that bought capacity and has a
22 contract, that's probably a large number. Actually

1 have physical capacity that they own that they sold,
2 that's a relatively small number.

3 Q. Okay. But the numbers that -- you wouldn't
4 be surprised, would you, if the number of people who
5 resell capacity is over a hundred?

6 A. If you count resales, yes, I would not be
7 surprised.

8 Q. And you wouldn't be surprised if the number
9 of people who physically owned capacity were in the
10 dozens?

11 A. That's -- for all of PJM?

12 Q. Yes.

13 A. Yes.

14 Q. Do you know how many unaffiliated entities
15 purchased electricity in the PJM last year?

16 A. That could be a very large number.

17 Q. Even bigger than the number of sellers?

18 A. That's right.

19 Q. Now, you testified on page 15 through 17 of
20 your direct testimony concerning the ease of
21 modifications to the bulk power transmission
22 system. Is that a fair general summary?

1 A. Starting with the question on line 4?

2 Q. Yes, sir.

3 A. Yes. That's dealing with the

4 transmission.

5 Q. Now, it is true that you agree that the

6 Illinois region's ability to meet its physical

7 delivery needs appear adequate at this time?

8 A. For the load within Illinois? Clarifying.

9 Q. I'll accept that clarification.

10 A. Yes. I agree they don't have any trouble

11 with that.

12 Q. Now, you then discuss at some length

13 various quotations and observations about the

14 incentives to construct transmission facilities. Is

15 that correct?

16 A. That's correct.

17 Q. Do any of those quotations or citations

18 specifically relate to either Illinois or to any

19 intertie between Illinois and a neighboring --

20 A. These specific ones were general comments

21 and do not refer to Northern Illinois.

22 Q. Are you familiar with Mr. Naumann's

1 testimony concerning the existence of -- strike
2 that, please.

3 Are you familiar with the ICC's record of
4 certifying bulk power transmission projects in
5 Illinois?

6 A. You mean jurisdictional certification?

7 Q. Permitting and authorizing the construction
8 of bulk power transmission projects in Illinois?

9 A. I don't believe that's a state
10 jurisdictional, if I understand your question
11 correctly.

12 Could you clarify what you mean by bulk
13 power sale?

14 Q. Sure.

15 I'm asking you whether you're familiar with
16 the record of the ICC in authorizing electric
17 utilities in the state of Illinois to build new bulk
18 power facilities.

19 A. I know in general that the state generally
20 has jurisdiction over the citing authority. Is that
21 what you're referring to? Of the said generator.
22 Illinois like other states --

1 Q. I'm not talking about generators.

2 A. Okay.

3 Q. Transmission facilities.

4 A. Transmission, yes, they do have that.

5 Q. Are you familiar with the ICC's record of

6 approval?

7 A. Not in a great deal of detail, but I know

8 from my experience with other states that it's

9 generally a state matter.

10 Q. So you cannot citing and authorizing

11 construction?

12 A. Right.

13 Q. Both?

14 A. Right.

15 Q. You could not testify one way or the other

16 on how easy or hard it is to build such projects in

17 the state of Illinois?

18 A. Not specifically in Illinois, no.

19 Q. Can you identify any case at all where the

20 Illinois Commerce Commission failed to approve or an

21 Illinois utility failed to build a needed bulk power

22 transmission facility?

1 A. No, not a specific case.

2 Q. You agree that PJM has a transmission
3 planning process. Right?

4 A. Yes.

5 Q. And the purpose of that transmission
6 planning process is to identify areas where
7 potential constraints can occur on the transmission
8 system. Right?

9 A. That's right.

10 Q. And in the event that PJM locates such a
11 potential constraint, the transmission planning
12 process is intended to also identify solutions.
13 Right?

14 A. Yes, sir.

15 Q. Are you familiar with the recently passed
16 Energy Policy Act of 2005?

17 A. Yes.

18 Q. Would you agree with me that it has in
19 addition to previously existing states citing
20 authority it has FERC authority to certify bulk
21 power projects in the event that states fail to act?

22 A. There's a time on that and also I believe

1 there has to be established that it's a critical
2 need for the bulk power. But FERC would then take
3 jurisdiction.

4 Q. And the critical need be might be
5 established, for example, through the kind of
6 planning process that I just asked you about?

7 A. If it was shown in the planning process,
8 yes.

9 Q. Now, it is also true, is it not, that PJM
10 operates an LMP market that has both a financial and
11 a physical component to it? You testified to that.
12 Right?

13 A. That's right.

14 Q. Would you agree that physical transmission
15 access is not necessary for reaching that energy
16 delivered to the ComEd service territory and that
17 contract paths and actual physical delivery may not
18 always match?

19 A. That's correct. You're talking about just
20 the physical from the financial market?

21 Q. Yes, sir. And you would agree with that
22 statement?

1 A. As I understand those terms, yes.

2 Q. Well, I'm quoting from a data-request
3 response, so.

4 A. Well, the idea that the -- I'm assuming you
5 defined financial market as in the bilateral
6 arrangements, the forward markets and the spot
7 market and then the physical market for the
8 generation. That's how I understand or agree on
9 that and my answer stands.

10 Q. We do agree. Thank you.

11 Now, you also testified about demand
12 response programs because you regard those as being
13 potentially relevant to market power houses. Is
14 that correct?

15 A. That's correct, the three things that the
16 analysis should look at.

17 Q. Now, on page 18 of your direct testimony,
18 you assert that only one megawatt hour of total PJM
19 load reductions occurred in the ComEd control area?

20 A. Could you refer me to a line?

21 Q. Page 14 to 115. I think it's 14 and 15.

22 A. That's right. That came from the Market

1 Monitors Report.

2 Q. Now, you would agree with me that that
3 referred to the number of customers that
4 participated directly in PJM's economic load
5 reduction program only, would you not?

6 A. I believe that's true at that point. PJM
7 also looked at the state programs, and they totalled
8 those separately and then gave a total number. I
9 believe that number refers to just the PJM load
10 reduction program.

11 Q. Well, since you mentioned it, would you
12 agree subject to check that Commonwealth Edison's
13 retail customers and load-control programs amount to
14 over 850 megawatts?

15 A. Subject to check. There are state
16 programs, yes.

17 Q. Would you also agree that RES customers,
18 that is customers who buy their power from
19 competitive Retail Electric Suppliers who also
20 participate in ComEd's state load control programs
21 amount to another 450 megawatts?

22 A. I don't know that.

1 Q. If that were true and those numbers
2 totalled to about 1300 megawatts, do you know if
3 that would make ComEd the single largest utility in
4 the country in terms of direct load control?

5 A. The relevance on the economic thing is what
6 impact that has on the overall demand. And that may
7 be the largest in PJM. Is that your contention?

8 Q. I'll amend my question. Largest in PJM?

9 A. That may be true, yes, subject to check.
10 But it sounds like it could be. The relevant issue
11 is --

12 Q. That's not the question I was asking. I
13 understand that you have views on what's relevant.

14 I'm going to ask you now a very short
15 series of questions, but I am specifically focused
16 on the narrative testimony that you've presented.

17 It is true, is it not, that that testimony
18 contains no evidence of any Exelon affiliate
19 exercising market power in or in any transaction
20 affecting northern with a small n Illinois?

21 A. That's correct.

22 Q. And it also does not make any claim that

1 there is currently market power being exercised by
2 anyone in Northern Illinois. Is that also true?

3 A. That's true. As I said, we need to do the
4 analysis to determine that.

5 Q. Is it also true that your testimony offers
6 no evidence of any specific instance of any exercise
7 of market power in Illinois at any time since the
8 year 2000?

9 A. It was never -- the analysis to my
10 knowledge has never been done. So it's never been
11 established.

12 Q. So it's not in your testimony?

13 A. It's not in my testimony if it's never been
14 established.

15 Q. Once again, as you'll hear, my questions
16 are going to go to your testimony.

17 Is it also true that that testimony
18 contains no evidence of any collusive behavior or
19 strategic bidding in or affecting Northern Illinois?

20 A. That's true.

21 Q. Now, you presented -- I'm going to try very
22 hard not to duplicate anything Mr. Stahl did here.

1 You presented calculations for both HHIs
2 and RSIs, meaning Residual Supply Indexes, for the
3 Northern Illinois area. Right?

4 A. That's correct. Those were the Market
5 Monitor's numbers.

6 Q. And to be clear, you refer I think at least
7 11 times in your testimony to ComEd control area.
8 Right?

9 A. Control area, yes.

10 Q. Okay.

11 A. For the time that those numbers were
12 calculated it was called control area.

13 Q. It's more than called. At the time those
14 numbers were calculated ComEd had a control area of
15 its own. Right?

16 A. That's correct.

17 Q. It doesn't anymore. Right?

18 A. That's correct, as of October 1, 2004, I
19 believe.

20 Q. And when it did have a control area, ComEd
21 was responsible for balancing generation and load
22 within that area. Right?

1 A. That's correct. That's what a control area
2 is.

3 Q. And now the balancing of generation and
4 load occurs throughout the entire PJM footprint.
5 Right?

6 A. That's correct.

7 Q. There's a single dispatch throughout the
8 entire PJM security constraints?

9 A. Yes.

10 Q. And there is a single derivation of NODAL,
11 N-O-D-A-L, prices for the entirety of PJM based on
12 that dispatch. Right?

13 A. It's single dispatch subject to the
14 constraints in the system.

15 Q. On a footprint wide basis?

16 A. On a PJM-wide basis.

17 Q. There's also no more separate capacity
18 market in the ComEd, in the former ComEd control
19 area. Right?

20 A. That's correct, although as you know, PJM
21 has proposed changes to that.

22 Q. Well, we've had references to the 99-page

1 transmittal letter that covered the RPM, and I
2 promise you I won't go there.

3 But it is true that there used to be a
4 capacity market specific to Northern Illinois but
5 that is no longer enforced. Right?

6 A. Right. It was the control area, yes.

7 Q. And when did that cease being enforced?

8 A. Well, it ceased on September 30, 2004.

9 Q. Now, you also discuss in your testimony at
10 page 7 but several other places in the direct but
11 several other places later on that market entry is
12 an issue that you think is important?

13 A. That's right.

14 Q. Know how many megawatts of new generation
15 have been added within the boundary of the former
16 ComEd control area in the last six years?

17 A. I responded using the North American
18 Electric Reliability numbers that it had increased
19 by 34 percent between 1998 and 2002 or so. But that
20 was for all of Illinois.

21 Q. That was for all of Illinois. And that's
22 why I'm asking you specifically whether you know for

1 the ComEd control area.

2 A. Ordinarily what I would do is call the
3 Staff of the Illinois Commission for that number,
4 but I can't do that now. I don't know.

5 Q. You don't know the answer.

6 Do you know whether the new generation
7 throughout Illinois has been added by a variety of
8 owners and operators?

9 A. In that period, yes, there was a variety.

10 Q. Not just utility affiliaties?

11 A. That's right.

12 Q. And not just affiliates of entities that
13 there already owned generation in Illinois?

14 A. That's true.

15 MR. RIPPIE: Thank you, Dr. Rose. That's all I
16 have.

17 JUDGE WALLACE: Mr. Flynn.

18 MR. FLYNN: I just have a few questions.

19 CROSS-EXAMINATION

20 BY MR. FLYNN:

21 Q. I, Dr. Rose. I'm Chris Flynn and I'm
22 going to be asking you very few questions this

1 morning on behalf of the Ameren Companies.

2 I would make the same statement that
3 Mr. Stahl and Mr. Rippie made. I am not asking you
4 about your -- the Attorney General's Late-Filed
5 Exhibit 1.4 in the Ameren dockets.

6 And it would be very hard to interpret the
7 questions that I'm going to put to you as calling
8 for information from that document, but I would like
9 to assure you that I am not.

10 If you think otherwise, let me know.

11 Thanks.

12 A. Okay.

13 Q. In your direct testimony -- let me see if I
14 understand your recommendation.

15 You're advising the Illinois Commerce
16 Commission that it should not rely on the wholesale
17 market to determine retail prices until such time as
18 the Commission can be or is satisfied that the
19 wholesale market is reasonably competitive. Is that
20 right?

21 A. Yes. And I would add that they need to do
22 the analysis first, that structural analysis of the

1 earlier line.

2 Q. And subject to the proviso that in reaching
3 a conclusion that it satisfies with respect to the
4 state of the wholesale market, the Commission should
5 perform the structural analysis that you discuss in
6 your testimony?

7 A. That's correct.

8 Q. And by wholesale market, I believe you used
9 the term Illinois or Regional Illinois -- I'm
10 sorry -- Illinois Regional wholesale market in your
11 testimony. Is that right?

12 A. That's right.

13 Q. And is it fair to say that by that term you
14 don't mean to suggest that Illinois is the relevant
15 wholesale market that the Commission should
16 analyze? Is that right?

17 A. Again, as you would use the term in a
18 Department of Justice guidelines, no. And again, I
19 specifically addressed that issue to say that it is
20 not the relevant market. That would have to be
21 established in the analysis.

22 Q. All right. The -- is it fair to say that

1 by that phrase you're referring to whatever market
2 in which the Ameren Companies operate that is
3 determined to be the relevant market?

4 A. Yes. Again, I would add, though, that that
5 market may change. So it may change over time even
6 within the course of a day or a season.

7 So you don't establish just a footprint.
8 You have to understand how the power is flowing
9 through time and how that changes to establish that
10 market.

11 Q. It could be multiple markets, then, that
12 the Commission has to analyze?

13 A. As well as multiple product markets.

14 Q. As well as multiple product markets. Is
15 that right?

16 A. That's correct.

17 Q. Thank you.

18 And I apologize and I'm sure it's my fault,
19 not yours. I've read your testimony and I've
20 listened to the cross today. But let me see if I
21 understand what you're saying to the Commission.

22 First of all, you know who the Ameren

1 Companies are when I use that phrase, don't you?

2 A. Yes.

3 Q. You're talking about Central Illinois Light
4 Company, Central Illinois Public Service Company,
5 and Illinois Power Company. Right?

6 A. That's right.

7 Q. All right. You would agree that beginning
8 in 2007, the Ameren Companies have to procure the
9 power they need to provide service to their
10 customers in the wholesale market? Is that right?

11 A. Beyond their own generation, the Ameren
12 Company owns?

13 Q. All right. Let's go company by company.
14 Central Illinois Light Company, how much generation
15 does it own?

16 A. I understand that there's over 8,000
17 megawatts that the Ameren Companies own in
18 Illinois. I don't know the amount specifically for
19 each company.

20 Q. I would like you to answer the question I
21 asked you. How much if you know does Central --

22 MS. HEDMAN: Objection. He answered the

1 question. He said he didn't know.

2 MR. FLYNN: All right. Well, I'm asking my
3 question now. And I guess Ms. Hedman can interrupt
4 it if she'd like, but it's just going to draw out
5 the process.

6 JUDGE WALLACE: Just a second.

7 MR. FLYNN: My question is, Judge, my question
8 is how much generating capacity if you know does
9 Central Illinois Light Company own?

10 MS. HEDMAN: That's been asked and answered.

11 THE WITNESS: I'll answer it again.

12 JUDGE JONES: Is that okay if he answers it?

13 Go ahead.

14 THE WITNESS: I believe the answer he's
15 lookingfor is that Central Illinois does not own any
16 generation because it's a distribution company now
17 part of the Ameren corporate structure:

18 MR. FLYNN: Q. All right. And Central
19 Illinois Public Service Company is also a
20 distribution company that owns no generation. Is
21 that correct?

22 A. The distribution company does not own any

1 of its own generation.

2 Q. All right. And you would also agree that
3 Illinois Power Company is a distribution company
4 that owns no generation. Is that right?

5 A. Yes.

6 Q. All right. So the sum total of the
7 generation owned by the three distribution companies
8 is zero. Is that correct?

9 A. My understanding of the way the corporate
10 structure is, that's true.

11 Q. And so if the lights are to stay on in
12 January 2007, these three companies must enter into
13 transactions with some entity with generation in
14 order to procure supply to provide service to their
15 customers. Is that right?

16 A. Are you assuming that the Ameren generation
17 affiliate would no longer send any power to the
18 distribution affiliates?

19 Q. Did you not understand my question?

20 A. I'm asking for a clarification.

21 Q. You're asking a clarification? Well, let
22 me ask you this question.

1 If CILCO were to acquire power from an
2 affiliate, that acquisition would be a wholesale
3 transaction. Is that correct?

4 MS. HEDMAN: Objection. It calls for a legal
5 conclusion.

6 MR. FLYNN: Okay. If this witness, who's come
7 here to tell us about wholesale markets and how they
8 operate, can't tell us what a wholesale transaction
9 is, I move to strike everything that he has
10 submitted. It's absurd. We're going to be here
11 till December.

12 MS. HEDMAN: May I respond?

13 JUDGE JONES: You may.

14 MS. HEDMAN: The way the question was asked, it
15 is not entirely clear what kind of a transaction it
16 is. And he needs to clarify in his question before
17 the witness can answer.

18 MR. FLYNN: All right. I'll re-ask it in case
19 he thought we were talking about groceries or
20 automobiles.

21 Q. Dr. Rose, are you with me?

22 A. Yes.

1 Q. All right. If CILCO were to purchase
2 power, electric power, 60 megahertz or 60 hertz, we
3 can agree on what -- let me start over.

4 Do you know what electric power is?

5 A. Yes. I do my own wiring in my house. I
6 have a pretty good idea. Once in awhile I get a
7 jolt.

8 Q. Well, I believe Mr. Rippie did establish
9 you're not an engineer, so. Remind me not to
10 visit.

11 A. I do everything by the code.

12 AUDIENCE: You won't be invited.

13 MR. FLYNN: Q. If CILCO purchases electric
14 power from an affiliate generator to resell to its,
15 CILCO's retail customers, that is a wholesale
16 electric power transaction, is it not?

17 A. That's a bulk power transfer subject to
18 FERC jurisdiction.

19 Q. Well, FERC has jurisdiction over wholesale
20 electric sales, does it not?

21 A. Yes.

22 Q. All right. And that sale from the

1 affiliated generator to CILCO for CILCO to resell to
2 its customers is a wholesale electric power
3 transaction. Correct?

4 A. The first part of that is, yes, that's a
5 bulk power transfer. And then the retail part is
6 retail.

7 Q. Yes, it is.

8 A. And the subject of why we're all sitting
9 here.

10 Q. All right. So even if the Ameren
11 Companies, the Ameren distribution companies are
12 acquiring power from an affiliate, they're doing so
13 pursuant to wholesale electric power transactions.
14 Is that right?

15 MS. HEDMAN: Objection. I think this calls for
16 a legal conclusion.

17 MR. FLYNN: Well, you know, I'll ask it this
18 way. I'll withdraw that question.

19 Q. In submitting your testimony, Dr. Rose, did
20 you assume that if the Ameren Companies acquire
21 power from their affiliate, they would not need to
22 engage in wholesale power transactions subject to

1 FERC jurisdiction?

2 A. There could be an agreement with the
3 distribution companies to continue to sell power.
4 And that would be subject to FERC jurisdiction, but
5 there could be a bilateral arrangement.

6 Q. All right. Are you -- was it your
7 assumption, then, and I'm not -- I just want to
8 clarify your answer.

9 Was it your assumption that a bilateral
10 agreement between one of the Ameren Companies and an
11 affiliated generator for electric supply could in
12 any way not be subject to FERC jurisdiction?

13 MS. HEDMAN: Objection. Calls for a legal
14 conclusion.

15 MR. FLYNN: No. I've asked him what his
16 assumption was. I did not ask him to opine what the
17 law is. I want to know what he assumed when he
18 wrote his testimony, the answers part, of course.
19 And I'm entitled to inquire.

20 JUDGE JONES: Okay. I'm not sure you finished
21 your response, had you?

22 MS. HEDMAN: Well, a very contentious issue in

1 this case is the reach of FERC jurisdiction and the
2 extent to which it preempts the authority of this
3 Commission.

4 And Mr. Flynn is attempting to get a
5 witness who is a nonattorney to opine on these
6 matters. And I think that's entirely inappropriate.

7 JUDGE JONES: I'm going to allow the question
8 with the proviso that the witness is not being
9 asked to render a legal opinion and the witness is
10 not being asked to render any opinion if he does not
11 have one.

12 However, let's face it, dozens of witnesses
13 are talking about wholesale transactions in these
14 dockets, dozens of expert witnesses. And they are
15 testifying to lots of matters that have legal
16 implications that are -- involve interpretations of
17 statutes and rules.

18 And they do their best as experts in those
19 fields to render opinions and -- in their testimony
20 and make assumptions in their testimonies and answer
21 questions.

22 So I think that we need to provide some

1 latitude in cross-examination in asking those
2 witnesses about those things, particularly if it's
3 about what assumptions they made in developing the
4 opinions that they are stating.

5 So I think the question is -- it is
6 appropriate under the circumstances. I would just
7 say that we would ask the witness to answer the
8 question if you have an answer to it.

9 THE WITNESS: Could I ask that you restate the
10 question?

11 JUDGE JONES: I don't think we want to read it
12 back. It's buried somewhere there. Ask it as best
13 as you can remember it and we'll see if that's
14 pretty much the question that was on the table.

15 MR. FLYNN: Q. Well, I'll ask this question
16 and that way I can't be criticized for not
17 remembering my own.

18 In preparing your testimony for this
19 proceeding, Dr. Rose, did you assume that CILCO, for
20 example, could acquire power from an affiliated
21 generator in a transaction not subject to FERC
22 jurisdiction?

1 A. No, I did not.

2 Q. So you assumed that any sales from an
3 affiliated generator to the Ameren Companies would
4 be subject to FERC jurisdiction?

5 A. Yes.

6 Q. All right. Did you assume in preparing
7 your testimony in this case that the Ameren
8 Companies have an affiliated generator with an
9 amount of generating capacity sufficient to serve
10 the entire distribution load of the three Ameren
11 Companies?

12 A. I believe it's not sufficient.

13 Q. Did you assume -- well, in fact, the amount
14 of generation owned by the Ameren Companies'
15 affiliated generator equates to something less than
16 50 percent of their combined distribution load. Is
17 that correct?

18 A. I don't know the exact amount, but that
19 sounds approximately correct.

20 Q. Would you accept that subject to check?

21 A. Yes.

22 Q. All right. So now that we've established

1 that, let me see if I can line up your -- well, I
2 have one more question.

3 In preparing your testimony, you assumed,
4 didn't you, that the full cost of power procurement
5 would be recovered from customers?

6 A. That's correct.

7 Q. And to clarify, from retail customers. Is
8 that right?

9 A. Yes.

10 Q. All right. So let me see. I think there
11 are three points here I want to make sure I have
12 right.

13 One is that the Ameren Companies have to go
14 to the wholesale market for at least half of their
15 power supply. Is that right?

16 A. Subject to check, again, yes, that sounds
17 right.

18 Q. All right. You believe that the prices
19 that are paid in the wholesale market should not be
20 used as a basis for retail charges. Is that right?

21 A. Well, my concern is that those costs will
22 be passed onto the retail customers, whatever those

1 costs are that will be incurred in order to procure
2 enough power to sell to and resell to the retail
3 customers.

4 So they would recover, as your earlier
5 question stated, from the customers.

6 Q. Okay. So your testimony to the Commission
7 isn't merely, hi, I'm Dr. Rose, I'm concerned, is
8 it?

9 A. Well, that's part of it. But part of it is
10 to do a study because the conditions are there that
11 there may be a significant chance that market power
12 is being exercised. That's why you need to do the
13 analysis.

14 Q. Okay. Well, let's figure out what happens
15 here in 2007. Go beyond your concern. I'm trying
16 to figure out what it is that you're recommending
17 that this Commission do. All right.

18 So back up for a second. I know we've been
19 over this, but I just want to make sure I have it
20 right.

21 The Ameren Companies have to go to the
22 wholesale market for some of their power at least.

1 They're going to pay wholesale prices, but you
2 assume they're going to recover all of them.

3 So your recommendation is, if I understand
4 it, don't let the Ameren Companies go to the
5 wholesale market?

6 A. Well, we're talking about a procurement
7 process that would depend on what's going on in the
8 wholesale market.

9 There may be other ways that other
10 witnesses for the People of the state of Illinois
11 are dealing with besides the proposal that the
12 Ameren Companies have made.

13 Q. So you're saying that there may be other
14 witnesses that the AG is offering who describe means
15 of accessing the wholesale market without triggering
16 any of the market-power concerns that you have.
17 Isn't that right?

18 A. Yeah. That may be better at reducing the
19 market-power concerns, yes.

20 Q. May be. You don't know for certain?

21 A. I'll let those witnesses deal with that
22 issue.

1 Q. Okay.

2 A. I did not address the auction design
3 specifically in my testimony.

4 Q. All right. Thank you.

5 Dr. Rose, do you have your rebuttal
6 testimony in the Ameren docket handy?

7 A. Yes, I do.

8 Q. Beginning at line 23, you referenced the
9 state of West Virginia?

10 A. Pages?

11 Q. I'm sorry. That's on page 8.

12 A. I'm sorry. 23?

13 Q. Beginning at line 23, you reference the
14 state of West Virginia. Is that right?

15 A. That's right.

16 Q. And you indicate that that has had flat
17 retail prices. Is that correct?

18 A. That's right.

19 Q. And in fact --

20 A. For the last few years. Actually had a
21 spike several years ago and then went back to about
22 the same rate. That's what the EIA data shows.

1 Q. Right.

2 And in fact, AEP, which owns utilities in
3 West Virginia, just filed a request for a 23 percent
4 increase in electric rates, citing increased fuel
5 and purchase power costs. Is that right?

6 A. I'm not familiar with that.

7 Q. All right. You haven't checked since the
8 time of your rebuttal testimony?

9 A. I didn't see that.

10 There are -- there was also the Allegheny
11 Energy in West Virginia. This number is actually
12 the entire state. So it would include -- it would
13 have to include both the Allegheny and the AEP
14 companies.

15 Q. Okay. So you're not saying, then, that
16 it's -- that you expect West Virginia retail rates
17 to necessarily remain flat?

18 A. No, I didn't say that.

19 Q. Okay. Thank you.

20 A. This is historic data. I'm sorry.

21 MR. FLYNN: Great. Thank you. I don't have
22 any other questions.

1 JUDGE WALLACE: Do you have any redirect,

2 Ms. Hedman?

3 MS. HEDMAN: I do.

4 REDIRECT EXAMINATION

5 BY MS. HEDMAN:

6 Q. Dr. Rose, counsel for Midwest Gen and the
7 utilities selectively quizzed you on a number of
8 details and a little trivia relating to the Illinois
9 electric markets and suggested that the knowledge
10 that you have of those markets derives only from the
11 EIA testimony in this case.

12 Didn't you work in Illinois on Illinois
13 matters over a number of years?

14 MR. STAHL: I'm going to object to the
15 characterization of my questions as seeking trivia.

16 JUDGE WALLACE: Overruled.

17 MS. HEDMAN: Thank you, Your Honor.

18 JUDGE WALLACE: Dr. Rose.

19 THE WITNESS: I'm sorry. I've lost the --

20 MS. HEDMAN: Q. The question is whether you
21 had done any work in Illinois over --

22 A. I've done some work in Illinois

1 previously. I was an Illinois resident at one time
2 and worked at Argon National Lab where we looked at
3 similar issues and have dealt with Illinois Commerce
4 Commission Staff on and off with Illinois issues.

5 Q. Now, Mr. Stahl asked you whether you had
6 done any analysis as to whether Midwest Gen has or
7 will exercise market power. And I believe
8 Mr. Rippie and Mr. Flynn asked you similar questions
9 related to their companies.

10 And I believe you answered that you didn't
11 have any information on those points. Isn't that
12 why a study needs to be done?

13 A. That's correct. I didn't say it in the
14 testimony, but I did call for an analysis to be done
15 to determine that, because to my knowledge and what
16 I've seen in the testimony, nobody presented
17 evidence one way or the other.

18 Q. Now, Mr. Rippie posited that Commonwealth
19 Edison's demand response program is the largest in
20 PJM, and you started to note that that wasn't the
21 relevant point. What is the relevant point?

22 A. Well, the issue -- the number refers to the

1 programs that PJM runs, not the state programs. And
2 PJM does try to sum those up.

3 I suspect in upcoming state-of-the-market
4 report they probably will have the state programs
5 and then we'll know specifically how it measures up
6 to the other state programs.

7 Q. And wouldn't the size of ComEd's demand
8 response program be a relative number compared to
9 ComEd's total demand?

10 A. Yes. Now it would, which I believe was the
11 question, and relatively small in that sense.

12 Q. And you were also asked whether or not any
13 specific examples of collusion were cited in your
14 testimony, and you indicated that there weren't.
15 Does that mean that no examples of collusion have
16 occurred?

17 A. There have been --

18 MR. RIPPIE: I object to this. My question was
19 very specific about what was in his testimony. I
20 did not ask him to muse about other things he's
21 heard or things that were not in his testimony.

22 This is beyond the scope of cross. I

1 suppose also supplemental testimony.

2 MS. HEDMAN: Counsel is almost afraid of the
3 answer to this question.

4 MR. RIPPIE: No. I'm always interested in
5 following the rules, so.

6 MS. HEDMAN: He was asked whether any examples
7 of -- he cited any examples of collusion, whether he
8 identified any examples of collusion. And I'm
9 simply asking him a question that goes to the
10 significance of that question.

11 MR. RIPPIE: My objection wasn't to relevancy.
12 I asked him about what was in his testimony. He
13 answered that. Asking him about things that weren't
14 in his testimony is outside the scope of my cross.

15 MS. HEDMAN: I think that's an unduly narrow
16 interpretation. He's asking the question in a way
17 that suggests that if it isn't in the testimony, it
18 didn't happen.

19 So I'm simply trying to clarify matters as
20 to whether he knows if there has been any example of
21 collusion

22 JUDGE WALLACE: Okay. Go ahead and answer the

1 question.

2 THE WITNESS: The specific question was on
3 Northern Illinois, and the answer was, no.

4 But there have been specific instances of
5 collusion, probably the most famously in the
6 California cases where FERC has recognized that
7 there was collusion and market manipulation.

8 That's probably the best documented by
9 FERC, by FERC Staff and others.

10 Also, this is a bit old, but there are
11 cases in PJM both in the ICAP market in 2001, I
12 believe, where there was manipulation of the market
13 there and also there's involving a Peco energy, an
14 Enron affiliate where FERC was investigating that in
15 2001.

16 That also dealt perhaps with using the
17 transmission lines in a way in order to favor the
18 generation affiliate of the same company.

19 MS. HEDMAN: Q. I believe you referred to Peco
20 as an Enron affiliate. Is that what you --

21 A. No. I'm sorry. Exelon. I was thinking
22 Enron in the California case, but an Exelon

1 affiliate.

2 Q. Under questioning from Mr. Flynn, you
3 stated that you assumed for purposes of your
4 testimony that sales from an Ameren Genco to an
5 affiliate utility were a wholesale subject to FERC
6 jurisdiction.

7 Do you know whether a sale from a Genco to
8 a utility affiliate could be structured to be a
9 state jurisdictional contract rather than a FERC
10 jurisdictional contract?

11 MR. FLYNN: Objection. The question went to
12 his assumption after a number of objections by
13 counsel on the grounds that he could not provide a
14 legal opinion.

15 So he was being asked what he assumed when
16 he prepared his testimony and he was quite clear
17 about what he assumed. This now goes into another
18 area.

19 Also I guess calling for a legal conclusion
20 and asking him about something that he apparently
21 didn't assume, at least according to the answer he
22 gave.

1 MS. HEDMAN: The form of the question is do you
2 know and the answer simply --

3 MR. FLYNN: The form of the question was quite
4 clearly did you assume.

5 MS. HEDMAN: The form of my question was do you
6 know.

7 JUDGE JONES: Well, if the question is just
8 asking do you know, then I'll allow the question.
9 If further questions lead to objections, we'll deal
10 with those.

11 So if you would answer that question
12 whether or not you know.

13 THE WITNESS: It could come under state
14 jurisdiction if it was deemed just a retail.

15 And often states now there are some
16 restructured states that -- where the State
17 Commission now has either by agreement with the
18 utility or by auction or some other method has some
19 jurisdiction over the retail prices.

20 MS. HEDMAN: Thank you. I have nothing
21 further.

22 JUDGE JONES: Recross?

1 MR. STAHL: None.

2 MR. RIPPIE: I have some.

3 RECROSS-EXAMINATION

4 BY MR. RIPPIE:

5 Q. R. Rose, let's first talk about demand
6 response programs. So I want to assume for a minute
7 that the demand response for all programs state and
8 federal at ComEd is 1200 megawatts.

9 It's lower than the number we used when we
10 were talking earlier. Right?

11 A. That's right. We used the larger number.

12 Q. If it's 1200 megawatts, that makes the
13 demand response larger than any single generating
14 unit in the entire state of Illinois. Right?

15 A. It's pretty close to the largest.
16 Bravewood and those units that are very large.

17 Q. And they're in the 1100 megawatt range.
18 Right?

19 A. That's right.

20 Q. And if you take out the nuclear plants,
21 it's substantially larger than any unit in
22 Illinois. Right?

1 A. Any unit, but you have to look at the total
2 capacity.

3 Q. I want you to answer my question first and
4 then we'll get to --

5 A. Larger than those other units.

6 Q. Okay. Do you know what ComEd's peak POLR
7 load is?

8 A. Offhand, no.

9 Q. If I told you 17 to 1800, would you take
10 that as a rough estimate?

11 A. That actually sounds low to me, but

12 Q. For the POLR load, not control area load.

13 A. You're talking about --

14 Q. Did I say a hundred? I'm sorry. My
15 colleagues are telling me I'm dropping zeroes.

16 And you were right. So let's try 17 to
17 18,000?

18 A. That sounds closer.

19 Q. Okay. Fair enough. I apologize.

20 A. That's all right.

21 Actually, I should ask a clarifying
22 question 'cause this does -- I should also ask how

1 you define POLR, 'cause some states use POLR to just
2 be those customers that can't get power. Some
3 states use it to mean all those that have not chosen
4 a specific supplier.

5 Q. The load that is being served by ComEd's
6 generation resources, not the load that is being
7 served by somebody else's using ComEd's distribution
8 system.

9 A. That's what I thought you meant.

10 Q. Good enough.

11 Now, would you also accept that on a
12 typical nonpeak day we're talking a load in the,
13 say, twelve or 13,000 megawatt range?

14 A. A nonpeak day?

15 Q. Right.

16 A. That's probably about right.

17 Q. Okay. So the variability between peak and
18 nonpeak conditions under the two definitions I gave
19 you is something on the order of 5,000 megawatts?

20 A. That's right.

21 Q. And demand control would amount to
22 25 percent of that variation if my assumption is

1 correct on its size. Right?

2 A. Yes.

3 Q. Okay. Let's talk for a minute about the
4 answers you gave about information that you had
5 heard about various behaviors in other markets. And
6 let's put aside California for a minute.

7 MS. HEDMAN: An objection is on the horizon.
8 The questions relate to his redirect on demand
9 response. Is that correct?

10 MR. RIPPPIE: I'm done with his redirect
11 testimony and response --

12 MS. HEDMAN: You're now moving on to something
13 else?

14 MR. RIPPPIE: I'm now talking about the colloquy
15 you had with him on allegations of collusion.

16 MS. HEDMAN: Thank you. I withdraw that
17 objection.

18 MR. RIPPPIE: Q. You talked about a
19 circumstance which you describe as being --
20 involving Peco, which was an Exelon affiliate in
21 2001. Is that right?

22 A. The investigation was in 2001.

1 Q. And FERC in fact opened an investigation.
2 Right?

3 A. That's right.

4 Q. That investigation was dismissed, was it
5 not?

6 A. Believe the term they used was
7 terminated.

8 Q. The investigation was terminated. Fair
9 enough.

10 And that investigation was terminated
11 without any finding whatsoever that Peco violated
12 any rule. Isn't that correct?

13 A. They did not reach a finding. They decided
14 that PJM had changed the rules, and they terminated
15 it based on that, not on a finding.

16 Q. Okay. I'm not asking you to speculate why
17 FERC did what it did.

18 A. There's no finding.

19 Q. There's no finding that Peco violated any
20 rule whatsoever, is there?

21 A. No, just the allegation.

22 Q. And there -- you haven't even heard any

1 allegations with respect to Northern Illinois about
2 those affiliates. Right?

3 A. No.

4 JUDGE JONES: The question was right, so I
5 think there's confusion over Q and A there.

6 MR. RIPPIE: Q. Is it correct that you are
7 aware of no allegations concerning those affiliates
8 in Northern Illinois?

9 A. That's correct.

10 MR. RIPPIE: That's all I have. Thanks.

11 JUDGE WALLACE: Mr. Flynn?

12 MR. FLYNN: Yes.

13 RECROSS-EXAMINATION

14 BY MR. FLYNN:

15 Q. R. Rose, I just want to make sure I
16 understood your response to Ms. Hedman's question on
17 redirect about the jurisdictional aspects of
18 transactions between affiliates.

19 Were you saying that it's your
20 understanding that an affiliated generator can
21 provide power to a distribution company in a retail
22 transaction and the distribution company can then

1 resell that power to its customers? Was that your
2 testimony?

3 A. I was thinking of specific examples where
4 that's happened where a utility by agreement would
5 --a distribution company may acquire power from an
6 affiliate to sell to their retail customers.

7 Q. All right. And you believe that that
8 transaction between the affiliate and the
9 distribution company is a retail transaction?

10 A. Well, subject to state jurisdiction.

11 Q. All right. But in any event, not to
12 subject to FERC jurisdiction?

13 A. Not if there's an agreement among the
14 participants in that state to supply power.

15 Q. All right. So you're saying that the
16 participants can agree to waive FERC's jurisdiction?

17 A. Including the seller, yes, except for they
18 just decided whatever agreement they are if there's
19 a bilateral arrangement between the generators and
20 the retail distribution company, that's the
21 arrangement that they make.

22 MR. FLYNN: That's fine.

1 JUDGE WALLACE: Thank you, Dr. Rose. You may
2 step down.

3 (Witness excused.)

4 JUDGE WALLACE: Seems like an appropriate time
5 to take a break.

6 (Whereupon a short recess
7 was taken.)

8 JUDGE JONES: Back on the record.

9 A couple of things. First off, are there
10 any appearances to be entered that haven't already
11 been entered today?

12 MR. ROSEN: Larry Rosen of behalf of the
13 Citizens Utility Board.

14 MR. BERNET: Richard Bernet on behalf of
15 Commonwealth Edison Company.

16 JUDGE JONES: Any others? All right.

17 And before we get into the cross- examination
18 of the next witness to be cross- examined, Ms.
19 Satter, did you want to --

20 MS. SATTER: I just wanted for the record
21 of the two documents that -- it is our understanding
22 that there are no questions for AG witness David

1 Effron.

2 So we will be submitting his testimony by
3 affidavit, and we'll probably have that available
4 for e-Docket Monday or Tuesday.

5 JUDGE JONES: All right. Did you want to offer
6 those at this time subject to those affidavits or
7 just take care of it all later? What's your
8 preference?

9 MS. SATTER: If we can just have the affidavit,
10 be given the opportunity to offer it, fine.
11 Otherwise, I'll move for the admission -- let me do
12 that.

13 Let me move for the admission of Attorney
14 General Exhibits Docket 05-0159, that would be
15 AG Exhibit 3.0 through 3.4, being the rebuttal
16 testimony of David J. Effron.

17 And that would be subject to the submission
18 of his affidavit through e-Docket.

19 And in Dockets 05-0160 through 162, I would
20 move for the admission of AG Exhibits 3.0 through
21 3.4 filed on e-Docket August 10, 2005.

22 And again, that would be subject to the

1 submission of his affidavit in that docket.

2 JUDGE WALLACE: All right. I also show Ag
3 Exhibits 3.5 attached to Mr. Effron's testimony.
4 It's labeled under ComEd's post2006 proposal
5 increases in electricity prices.

6 MS. SATTER: Okay. Thank you. I stand
7 corrected, then.

8 JUDGE WALLACE: Etc., etc.

9 MS. SATTER: Thank you.

10 JUDGE WALLACE: Are there any objections to
11 those exhibits? I'm going to go ahead and admit
12 those, and we'll have the affidavit on file next
13 week.

14 ComEd Exhibits 3.0, 3.1 labeled AG
15 Exhibit 3.0, 3.1, 3.2, 3.3, 3.4, and 3.5 are
16 admitted.

17 (Whereupon AG Exhibits 3.0,3.1,
18 3.2, 3.3, 3.4, and 3.5
19 were admitted into evidence
20 in Docket 05-0159.)

21 JUDGE JONES: Similarly, in the Ameren dockets, the
22 following exhibits are admitted into the evidentiary

1 record as offered just now by Ms. Satter.

2 AG Exhibits 3.0, 3.1, 3.2, 3.3, and 3.4,
3 all filed on e-Docket on August 10, 2005, those are
4 admitted. And leave is given to the Attorney
5 General to file an affidavit with respect to those
6 within seven days.

7 Is that sufficient time?

8 MS. SATTER: Yes, it is.

9 JUDGE JONES: OKAY. Anything else you need on
10 that?

11 MS. SATTER: No. I think we're set.

12 JUDGE WALLACE: All right. You may call your
13 next witness.

14 MS. SATTER: The Attorney General would like
15 to call Harvey Salgo.

16 (Whereupon AG Exhibits 3.0,
17 3.1, 3.2, 3.4 were admitted
18 into evidence in Docket No.
19 05-0160,0161,0162.)
20
21
22

1 HARVEY SALGO

2 called as a witness on behalf of the People of the
3 State of Illinois, having been previously duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. SATTER:

7 Q. Mr. Salgo, could you state your name and
8 business address for the record.

9 A. Yes. My name is Harvey Salgo. My business
10 address is La Capra Associates, 20 Winthrop Square,
11 Boston.

12 Q. Do you have in front of you documents
13 marked as Attorney General or AG Exhibits 2.01 and
14 2.1 in Docket 05-0159?

15 A. Yes, I do.

16 Q. And does that consist of 27 pages of
17 questions and answers and your CV?

18 A. Uh-huh. Yes, it is.

19 Q. And did you prepare these documents?

20 A. Yes, I did.

21 Q. Do you have any changes or corrections you
22 would like to make to them?

1 A. No, I don't.

2 Q. If you were asked these questions contained
3 in the documents today, would your answers be the
4 same?

5 A. Yes, they would.

6 Q. And are your answers true and correct to
7 the best of your knowledge, information, and belief?

8 A. Yes they are.

9 MS. SATTER: I would move for the admission of
10 AG Exhibits 2.0 and 2.1 in Docket 05-0159 at this
11 time.

12 JUDGE WALLACE: Any objection?

13 MR. RIPPIE: No, there is not.

14 JUDGE WALLACE: Mr. Salgo did not have
15 rebuttal. Right? Just direct.

16 MS. SATTER: That is correct.

17 JUDGE WALLACE: Okay. Thank you.

18 AG Exhibits 2.0 and 2.1 are admitted.

19 (Whereupon AG Exhibits 2.0
20 and 2.1 were admitted into
21 evidence in Docket 05-0159.)

22 MS. SATTER: And now in Dockets 05-0160 through

1 0162.

2 Q. Mr. Salgo, do you have before you
3 documents marked as AG Exhibits 2.0 and 2.1 in
4 Docket Number 05-0160 through 0162 consolidated?

5 A. Yes, I do.

6 Q. And did you prepare these documents?

7 A. Yes, I did.

8 Q. And do you have any changes or corrections
9 to those documents?

10 A. No, I do not.

11 Q. If you were asked the questions contained
12 in those documents today, would your answers be the
13 same?

14 A. Yes.

15 Q. And are your answers true and correct to
16 the best of your knowledge, information, and belief?

17 A. Yes.

18 MS. SATTER: I would move for the admission of
19 AG Exhibit 2.0 and 2.1 which were filed on e-Docket
20 on June 15, 2005.

21 JUDGE JONES: Any objections? Let the record
22 show there are not.

1 In Dockets 05-0160 through 0162, AG
2 Exhibits 2.0, direct testimony, and AG Exhibit 2.1,
3 CV, are admitted into the evidentiary record as
4 filed on e-Docket on June 15, 2005.

5 (Whereupon AG Exhibits 2.0 and 2.1
6 were admitted into evidence in Docket
7 05-0160, 0161, 0162.)

8 MS. SATTER: Thank you.

9 The witness is available for questions.

10 JUDGE WALLACE: Mr. Stahl.

11 MR. STAHL: Thank you.

12 CROSS-EXAMINATION

13 BY MR. STAHL:

14 Q. Morning, Mr. Salgo. My name is David Stahl
15 and I am one of the lawyers representing a company
16 called Midwest Generation in this case.

17 Mr. Salgo, I'm going to be cross-examining
18 you in both the ComEd and Ameren dockets, but if I
19 refer to testimony, I will be referring to your
20 testimony in the ComEd docket. Okay?

21 A. Okay.

22 Q. And if you would, if you could turn to page

1 13 of that testimony, I have a couple questions
2 about a question and answer that begins at line 3 of
3 page 13.

4 A. Okay.

5 Q. There you are discussing the analysis that
6 you say hasn't been done of how much prices may be
7 increased by various risk premiums --

8 A. Yes, it is.

9 Q. And at the end of that answer you say the
10 company has not performed any estimates of the total
11 risk premiums that would be included in three or
12 five-year supply contract bids.

13 Are you aware of the existence of any
14 studies that estimate risk premiums for three or
15 five-year contracts of this type?

16 A. No, I'm not. But I think that the company
17 could have looked at, for example, the results of
18 the New Jersey auction and other auctions.

19 Q. If one were interested in doing a study of
20 that kind, what kind of information is available
21 that ought to be looked at?

22 A. Well, I think the outcome of the auctions

1 themselves.

2 Q. And you're referring to New Jersey in
3 particular?

4 A. New Jersey and others, yes.

5 Q. And that information is publicly available
6 that would enable one to do that kind of analysis?

7 A. I think whether or not the -- all of the
8 information is publicly available. Looking at the
9 final prices in the auction relative to what the
10 forwards were going into that auction, it gives some
11 idea of what the risk premium would look like.

12 Q. About how long would it take someone to do
13 that type of analysis if they thought it was
14 important to do so?

15 A. I'm not sure right off. I doubt that it
16 would be very long.

17 Q. You didn't do it, did you?

18 A. No.

19 MR. STAHL: I have nothing further.

20 JUDGE WALLACE: Mr. Fosco?

21 MR. FOSCO: Your Honor, Staff actually doesn't
22 have cross, but we do have to exhibits to admit,

1 assuming there's no other objections.

2 JUDGE WALLACE: All right. Have they been
3 marked?

4 MR. FOSCO: I have marked them and I've
5 tendered to the court reporter what has been Staff
6 Cross Exhibits 2 and 3.

7 Your Honor, I've tendered to the court
8 reporter two documents, Staff Data Requests
9 EDiv-AG-1.03 has been marked as Staff Cross Exhibit
10 2.

11 And the response to Staff Data Request
12 EDiv-AG-1.04 has been marked as Staff Cross Exhibit
13 3. I've tendered two copies, one for each docket.

14 These were data-request responses directed
15 to the AG and to this witness to receive responses.
16 And my understanding in discussion with counsel for
17 the AG is they have no objection. No other parties
18 have any concerns.

19 We would move for admission of Staff Cross
20 Exhibits 2 and 3 in both dockets.

21 JUDGE JONES: Thank you.

22 JUDGE WALLACE: Any objection?

1 Hearing none, Staff Cross Exhibit 2 and
2 Staff Cross Exhibit 3 are admitted into 05-0159.

3 (Whereupon Staff Cross
4 Exhibits 2 and 3 were
5 admitted into evidence in Docket
6 05-0159.)

7 JUDGE JONES: And likewise, Staff Cross 2 and
8 Staff Cross 3 as just identified by Mr. Fosco are
9 admitted in Dockets 05-0160 through 62.

10 (Whereupon Staff Cross Exhibits 2 and
11 3 were admitted into evidence in Docket
12 05-0160, 0161, 0162.)

13 JUDGE WALLACE: All right. Thank you.

14 Mr. Rippie?

15 MR. RIPPIE: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. RIPPIE:

18 Q. Mr. Salgo, my name is Glenn Rippie and I'm
19 one of the attorneys for Commonwealth Edison. And I
20 will be asking you a few questions here today.

21 A. Good morning.

22 Q. As with Mr. Stahl, my cross-examination

1 should stand in both of the dockets.

2 Mr. Salgo, is it true that your most
3 advanced graduate degree is as a lawyer?

4 A. Yes, it is.

5 Q. And you are not, however, practiced --
6 admitted to practice in Illinois. Is that correct?

7 A. That's correct.

8 Q. Is it fair to say that you are not
9 intending to offer any opinions on Illinois law in
10 your testimony?

11 A. That's correct.

12 Q. Are you familiar with the Illinois Public
13 Utilities Act?

14 A. I have not really examined it in any
15 detail.

16 Q. You are also an economic consultant. Is
17 that true?

18 A. That's right.

19 Q. Commonwealth Edison asked you to produce
20 any work papers that you had relating to your
21 testimony. And is it correct that your work papers
22 reflected no economic studies, analyses, or data?

1 A. That's right.

2 Q. In fact, you had no work papers at all?

3 A. Correct.

4 Q. Now, as I understand, the first part of
5 your testimony discusses a variety of questions
6 about the mix of resources that might be used to
7 supply Commonwealth Edison's POLR load. Is that a
8 fair eye-level characterization?

9 A. I think so, yes.

10 Q. Do you believe that there is anything
11 inherently unjust and unreasonable about ComEd
12 purchasing energy to serve retail customers in
13 transactions?

14 A. As a legal matter?

15 Q. No. In the same sense that you're
16 testifying.

17 MS. SATTER: I'm sorry. Can you restate the
18 question?

19 MR. RIPPIE: I can repeat the question.

20 Q. Do you believe that there is anything
21 inherently unjust and unreasonable about ComEd
22 buying energy to serve retail customers in wholesale

1 transactions?

2 A. No, I don't.

3 Q. In fact, ComEd has done that for years.
4 Right?

5 A. I assume so.

6 Q. Other utilities around the country have
7 done it for years?

8 A. Yes.

9 Q. And is it also true that other utilities
10 around the country have purchased such energy to
11 serve retail customers from both affiliated and
12 unaffiliated suppliers?

13 A. Yes.

14 Q. Do you claim that there's anything
15 inherently imprudent about ComEd purchasing
16 electricity to serve retail customers in wholesale
17 transactions?

18 MS. SATTER: I'm going to object in that asking
19 for whether or not something is prudent or not asks
20 for a legal conclusion that would only be determined
21 after the standard is established and a review is
22 made by a regulatory agency.

1 MR. RIPPIE: Your Honors, I'm happy to make
2 clear that I'm not asking for a legal conclusion.
3 But this witness discusses at great length what
4 kinds of procedures and studies he would recommend
5 the Commission do.

6 And my question was inherently prudent. If
7 the witness believes that an inquiry has to be
8 undertaken, I presume his answer is going to be no
9 and the inquiry has to be undertaken.

10 JUDGE WALLACE: Objection overruled.

11 Go ahead and answer the question, please.

12 THE WITNESS: If -- as I understand the
13 question, it's inherently regardless of any
14 activity, the answer is, no, it's not inherently
15 imprudent.

16 MR. RIPPIE: Q. And in fact it might be
17 prudent or it might not depending upon the
18 circumstances in your opinion?

19 A. The specific transactions what lead up to
20 them, so on and so forth, yes.

21 Q. Now, you also agree that different
22 alternative portfolio that ComEd might use to serve

1 its load could feature different mixes of products,
2 different mixes of procurement methods, different
3 times to procure, and different contract durations?

4 A. Yes.

5 Q. And those might include combinations that
6 would include standard market product purchases, to
7 use your words?

8 A. Yes.

9 Q. They might also include unit contingent
10 contracts. Right?

11 A. Yes.

12 Q. They might include contracts for base load,
13 peak, super peak and full requirements and --

14 A. That's right.

15 Q. Those are all different kinds of wholesale
16 electricity transactions. Right?

17 A. Yes, they are.

18 Q. Now, nothing in your testimony suggests
19 that ComEd should automatically purchase such
20 products from an affiliate such as Exelon
21 Generation, does it?

22 A. Would I assume that you automatically

1 purchase from an affiliate, no.

2 Q. You would expect that Commonwealth Edison
3 should use some mechanism to select the best
4 possible vendor. Right?

5 A. That's right.

6 Q. If Commonwealth Edison did that selection
7 in a prudent manner, would you agree that ComEd
8 would be able to recover the resulting costs from
9 the ratepayers for whom it used the electricity to
10 supply it?

11 MS. SATTER: This is beyond the scope of the
12 witness' testimony. He did not discuss recovery
13 from ratepayers. He discussed procurement of the
14 electricity.

15 MR. RIPPIE: I seriously disagree with that
16 characterization. This witness describes what sort
17 of process the company ought to use to acquire its
18 electricity.

19 And I'm entitled to ask the witness simply
20 if we do the right thing, are we entitled to get our
21 costs recovered.

22 MS. SATTER: The question is whether or not he

1 addressed the method of cost recovery, and I don't
2 believe he did. I mean, if Mr. Rippie can direct us
3 to someplace in his testimony where he does, then it
4 will be clear. But I don't recall that reference.

5 MR. RIPPIE: His concluding question is, I
6 recommend that the Commission require ComEd to
7 present a complete analysis of the rate impacts and
8 risk levels for bundled customers. The whole --

9 JUDGE WALLACE: Okay. Go ahead and answer the
10 question, please, Mr. Salgo.

11 THE WITNESS: If the Commission determines that
12 the company's actions were prudent, it should
13 recover them.

14 MR. RIPPIE: Q. And is there anything special
15 about any particular customer class that would lead
16 you to change that answer?

17 Let me try that question again. We also
18 recover from the industrials the costs of serving
19 the industrials, from the small residential -- and
20 from the residential the cost of serving the
21 residential, from the small commercial industrials
22 the costs of serving them.

1 A. However the ratemaking works, I was not
2 making a distinction in terms of recovery.

3 Q. Fair enough.

4 Now, if I could ask you to turn to page 22,
5 lines 2 through 7 of your direct. You testified by
6 way of example that accepting for argument sake that
7 the proposed portfolio contains the best mix of
8 products for bundled customers, the same portfolio
9 could be acquired by purchasing portions of the
10 required supply in a more frequent periodic basis.

11 And as I understand this piece of
12 testimony, you're making recommendations about the
13 frequency and the way in which an auction process
14 would be potentially run. Is that --

15 A. It is part of the testimony, that's fair.

16 Q. So it is true that you are not opposed to
17 auctions per se?

18 A. I think an auction and these particular
19 types of products are one option that the company
20 has. I do not agree that they ought to be the sole
21 option.

22 Q. I understand that. But to be clear, you do

1 not believe that there is something per se unjust
2 and unreasonable about using an auction?

3 MS. SATTER: If I could just request that
4 Mr. Rippie stipulates when he says unjust and
5 unreasonable he's not referring to the standard
6 that's contained in the Public Utilities Act.

7 MR. RIPPIE: Q. Okay. In the sense that you
8 used those terms in your testimony.

9 A. It's -- if used in proper circumstances, an
10 auction is a reasonable tool to utilize.

11 Q. But I also understand your recommendation
12 to be that we should consider at least a broader set
13 of arm's-length competitive procurement mechanisms?

14 A. That's right.

15 Q. And would you agree that if we used a
16 competitive procurement process more broadly defined
17 in a way that was prudent, Commonwealth Edison ought
18 to be able to recover the costs from its customers?

19 A. I think I have to go back to what I said
20 earlier, that if in light of Commission rules and
21 Commission -- and Commission review, the Commission
22 determines that the company's behavior is prudent,

1 it ought to recover.

2 Q. Fair enough.

3 Now, would you agree that a genuinely
4 competitive process if properly implemented would
5 put downward pressure on prices?

6 A. Yes, it would.

7 Q. Now, might there be other benefits to
8 consumers of a genuinely competitive process as
9 well?

10 A. I'm not sure what you're referring to, sir.

11 Q. Well, is an auction, for example,
12 transparent?

13 A. Is an auction transparent? If it's set up
14 transparently and run properly, it would be
15 transparent.

16 Q. Is an auction where bids are called out and
17 suppliers respond to those called-out bids a
18 transparent process?

19 A. Yes.

20 Q. And is an auction of that nature also
21 nondiscriminatory?

22 A. I'll assume so, yes.

1 Q. In the sense that whoever comes in with the
2 lowest price wins?

3 A. Subject to whatever the qualification
4 criteria may have been, yes.

5 Q. Fair enough.

6 Now, your testimony doesn't make any
7 recommendation about the specific components that
8 Commonwealth Edison's 2007 and thereafter portfolios
9 should have in it, does it?

10 A. No, it does not.

11 Q. And to be clear, it makes no
12 recommendations about the term, the type of supply,
13 i.e., base load, peak, super peak, etc., or the
14 mechanism which should be used to acquire it?

15 A. No. I think those should be evaluated on
16 an ongoing basis.

17 Q. Is it also true that your testimony
18 contains no analysis of the level of prices that
19 might be expected to result from any alternative
20 procurement mechanism?

21 A. That's correct.

22 Q. And in fact, is it your testimony, is it

1 not, that professional judgment is required to
2 assess what effects, if any, events would have on
3 procurement practices?

4 A. Professional judgment by those who are
5 qualified to take it is always a requirement in
6 procurement.

7 Q. Should that judgment be exercised both with
8 respect to what products to buy and what hedges to
9 acquire?

10 A. I think the answer is yes, and I would
11 consider a hedge a type of product.

12 Q. Fair enough.

13 In Commonwealth Edison's proposal that
14 professional judgment will be exercised by each of
15 the suppliers proposing a package of products, would
16 not it?

17 A. Yes, it will, for the type of product
18 being solicited by ComEd.

19 Q. And the suppliers who win will be those
20 that offer that package of products at the lowest
21 costs. Right?

22 A. On the day of the auction, that's right.

1 Q. And then they will be obligated to maintain
2 that cost for the entire term of their contract
3 regardless of whether or not their professional
4 judgment was right or wrong?

5 A. That's the nature of the product that the
6 company is soliciting and, as I understand it, the
7 nature of the contractual relationship.

8 Q. Do you know when Commonwealth Edison
9 Company began considering what mechanism it should
10 propose for the design of a post2000 procurement
11 process?

12 A. I don't know for sure. It was some time
13 ago. No, I don't know for sure.

14 Q. Do you know if it was prior to the time
15 when Commonwealth Edison proposed -- excuse me --
16 prior to the time that an affiliate of Commonwealth
17 Edison proposed to acquire Illinois Power Company?

18 A. No, I don't.

19 Q. Are you aware of the affiliate of
20 Commonwealth Edison's proposal to acquire Illinois
21 Power Company?

22 A. No.

1 Q. Are you aware of the Commission's post2000
2 initiative?

3 A. Generally, yes.

4 Q. Do you know when it started?

5 A. Not specifically.

6 Q. Do you know how many working groups it
7 has?

8 MS. SATTER: I'm going to object to this line
9 of questioning as beyond the scope of the witness'
10 testimony.

11 We also filed a motion to strike references
12 to that process on the basis that there were
13 promises made that that process would not be used in
14 subsequent litigation.

15 MR. RIPPPIE: Let me respond to those in order.

16 This witness testified that Commonwealth
17 Edison did not sufficiently consider alternatives.
18 And I am entitled to show that there was a
19 multi-year process in which alternatives were
20 rigorously considered.

21 With respect to the second objection, I am
22 carefully avoiding or at least have so far carefully

1 avoided asking this witness anything about the
2 substance of those proceedings. I've merely asked
3 him about when they began and the number of times
4 they met.

5 JUDGE WALLACE: Objection overruled.

6 Go ahead and answer the question.

7 MR. RIPPIE: Q. Do you know how many working
8 groups there were?

9 A. Were there several, but I don't know how
10 many.

11 Q. Do you know how many times the working
12 groups met?

13 A. No.

14 Q. Do you know how many people participated in
15 the process?

16 A. No, I don't.

17 Q. Do you know if any stakeholder was excluded
18 from the process?

19 A. I don't.

20 Q. You're not aware of any stakeholder being
21 excluded --

22 A. No, I'm not.

1 MS. SATTER: I just want to state for the
2 record that I have a continuing objection to this
3 line of questioning.

4 JUDGE WALLACE: So noted. Thank you.

5 MR. RIPPIE: Q. Do you know whether the
6 Attorney General's office participated?

7 A. No, I don't.

8 Q. Do you know whether final reports were
9 generated?

10 A. I saw a Staff report.

11 Q. Did you see any others?

12 A. I didn't see any other reports.

13 Q. When you testified that there was no
14 consideration given or no adequate consideration
15 given to alternatives, did you consider any post2006
16 initiative documents other than the Staff report you
17 saw?

18 A. I looked only at the testimony filed in the
19 case.

20 Q. Do you know how ComEd commenced Docket
21 05-0159?

22 A. No, I don't.

1 Q. You testified also concerning the process
2 by which the Commission can review auction results.
3 Are you aware -- first of all, are you familiar with
4 Rider CPP?

5 A. I'm familiar with references to it. I have
6 not read the rider.

7 Q. So if I were to ask you -- I guess I will
8 ask you and tell me if you don't know.

9 Is there any provision of Rider CPP which
10 limits the types of information that the Commission
11 can consider in deciding whether to essentially
12 approve the auction results?

13 A. Not that I know of. But whatever written
14 review is going to be undertaken can be done in a
15 couple of days.

16 Q. Okay. Let's explore that.

17 Is there any provision of Rider CPP which
18 limits the Commission to only considering the
19 information that it gathers in those couple of days?

20 A. No, there is not.

21 Q. Is there any provision of Rider CPP which
22 limits the Commission's ability to gather

1 information prior to the commencement of that
2 period?

3 A. I'll assume that no rider would preclude
4 the Commission from gathering information.

5 Q. Do you know whether Commonwealth Edison
6 owns any generation?

7 A. I've been operating on the assumption that
8 it does not, but I don't know whether it may own a
9 small amount of generation.

10 Q. Assume your assumption is correct and that
11 it doesn't. Does that imply that Commonwealth
12 Edison must purchase supply for its retail
13 customers?

14 A. Yes, it does.

15 Q. And do you agree that those purchases are
16 subject -- you agree that those purchases are made
17 under sellers' tariffs on file with FERC?

18 A. Yes, I do.

19 Q. Would you also agree that Commonwealth
20 Edison's actual costs of buying power -- strike
21 that.

22 Are you aware of any Federal Energy

1 Regulatory Commission tariff or regulation that
2 would require any wholesale supplier to sell energy
3 to Commonwealth Edison at below market prices?

4 A. No, I'm not.

5 MR. RIPPKE: Thank you very much. That's all I
6 have.

7 JUDGE WALLACE: I believe that was all the
8 cross.

9 Redirect?

10 MS. SATTER: I do have a couple of questions.

11 REDIRECT EXAMINATION

12 BY MS. SATTER:

13 Q. Mr. Salgo, you were asked about discussions
14 in the post2006 initiative process?

15 A. Yes.

16 Q. My question to you is, when you prepared
17 your testimony, did you review matters that were
18 submitted in the record in this case?

19 A. Yes, I did.

20 Q. And was your testimony based on matters
21 submitted in the record in this case?

22 A. Yes, it was.

1 Q. Okay. And to the best of your knowledge --
2 strike that.

3 Those are the only questions I have. Thank
4 you.

5 JUDGE WALLACE: Any recross?

6 (Whereupon there was then
7 had an off-the-record
8 discussion.)

9 JUDGE WALLACE: Thank you, Mr. Salgo. You may
10 step down.

11 (Witness excused.)

12 (Whereupon a short recess
13 was taken.)

14 JUDGE WALLACE: Let's go back on the record.

15 Ms. Karegianes.

16 (Witness sworn.)

17

18

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1 MICHAEL SMITH

2 Called as a witness on behalf of Constellation
3 Energy Commodities Group, Inc., having been duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. KAREGIANES:

7 Q. Good morning, Mike.

8 A. Good morning.

9 Q. Would you please state your name and
10 business address.

11 A. Michael D. Smith. My business address is
12 Constellation Energy Commodities Group, 111 Market
13 Place, Suite 500, Baltimore, Maryland, 21202.

14 Q. And who is your employer and in what
15 capacity are you employed?

16 A. I'm the vice-president for regulatory and
17 legislative affairs for Constellation Energy
18 Commodities Group.

19 Q. Mike, do you have before you direct
20 testimony Exhibit Number 1.0?

21 A. Yes, I do.

22 Q. As well as two attachments, 1.1 and 1.2?

1 A. Yes, I do.

2 Q. Do you also have before you rebuttal
3 testimony Exhibit Number 2.0?

4 A. Yes, I do.

5 Q. Did you prepare or have prepared under your
6 direction and supervision direct and rebuttal
7 testimony for Docket 05-0159?

8 A. Yes.

9 Q. And now, may I direct your attention to the
10 document that we just discussed that was marked as
11 direct testimony 1.0, consisting of 10 pages of
12 questions and answers plus a cover page and two
13 exhibits?

14 A. Okay.

15 Q. Do you have any corrections or revisions to
16 make to Exhibit 1.0?

17 A. No, I do not.

18 Q. If you were asked the same questions that
19 are appear in Appendix 1.0, would your responses be
20 the same today?

21 A. Yes, they would.

22 Q. Is the information contained in Exhibit 1.0

1 true and correct to the best of your information and
2 belief?

3 A. Yes, it is.

4 Q. Now I would like to call your attention to
5 the document marked as rebuttal testimony, Exhibit
6 2.0, consisting of seven pages of questions and
7 answers plus a cover page?

8 A. Okay.

9 Q. Do you have any corrections or revisions to
10 make to that exhibit?

11 A. No, I do not.

12 Q. If I were to ask you the questions which
13 appear in Exhibit 2.0, would you give the same
14 answers today?

15 A. Yes, I would.

16 Q. Is the information contained in Exhibit 2.0
17 true and correct to the best of your information and
18 belief?

19 A. Yes.

20 MS. KAREGIANES: Your Honors, I would like to
21 move for the admission of Exhibits 1.0, 1.1, 1.2
22 which were filed on e-Docket on June 8th as well as

1 Exhibit 2.0, which was filed on e-Docket on August
2 3rd.

3 JUDGE WALLACE: Are there any objections?

4 CCG Exhibits 1.0, 1.1, 1.2, and 2.0 are
5 admitted in 05-0159.

6 (Whereupon CCG Exhibits 1.0,
7 1.1, 1.2, and 2.0 were admitted
8 into evidence in Docket 05-0159.)

9 MS. KAREGIANES: Thank you.

10 Q. Now, Mr. Smith, now we're going to turn to
11 05-0160, 61, and 62 Consolidated.

12 Would you please state your name and
13 address.

14 A. Yes. Michael D. Smith. My business
15 address is 111 Market Place, Suite 500, Baltimore,
16 Maryland 21202.

17 Q. And who is your employer and in what
18 capacity are you employed?

19 A. My employer is Constellation Energy
20 Commodities Group. I am a vice-president of
21 regulatory and legislative affairs.

22 Q. And do you have before you direct testimony

1 marked Exhibit 1.0 with two attachments?

2 A. Yes, I do.

3 Q. And do you also have before you rebuttal
4 testimony marked as Exhibit 2.0?

5 A. Yes, I do.

6 Q. May I direct your attention to 1.0, which
7 consists of 11 pages of questions and answers plus a
8 cover page and two exhibits.

9 Do you have any questions or revisions to
10 make to Exhibit 1.0?

11 A. No, I do not.

12 Q. Is the information contained in Exhibit 1.0
13 true and correct to the best of your information and
14 belief?

15 A. Yes.

16 Q. And if I were to ask you the questions
17 which appear in that exhibit. Would you give the
18 same answers?

19 A. Yes.

20 Q. And now I would like to call your attention
21 to the document marked rebuttal testimony, Exhibit
22 2.0, and it consists of eight pages of questions and

1 answers plus a cover page.

2 Do you have any corrections or revisions to
3 make to 2.0?

4 A. No.

5 Q. If I were to ask you the questions which
6 appear in Exhibit 2.0, would you give the same
7 answers today?

8 A. Yes.

9 Q. Is the information contained in the exhibit
10 true and correct to the best of your information and
11 belief?

12 A. Yes.

13 MS. KAREGIANES: And Your Honors, I would like
14 to move for the admission of Exhibits 1.0, 1.1, 1.2
15 and 2.0.

16 JUDGE JONES: Thank you.

17 Any objection to those? Let the record
18 show those exhibits are hereby admitted evidentiary
19 review record in Consolidated Dockets 05-0160, 61,
20 and 62. All bear the CCG prefix.

21 They include 1.0., direct testimony; 1.1,
22 and 1.2, all filed June 15, 2005; also 2.0, rebuttal

1 filed August 10, 2005, all admitted as appear on
2 e-Docket.

3 (Whereupon CCG Exhibits 1.0, 1.1, 1.2,
4 2.0 were admitted into evidence in
5 Docket 05-0160, 0161, 0162.)

6 MS. KAREGIANES: Thank you.

7 I would like to tender the witness for
8 cross-examination.

9 MR. FLYNN: I have no questions for Mr. Smith.

10 JUDGE WALLACE: We will note for the record is
11 it extreme disappointment?

12 Mr. Bernet.

13 CROSS-EXAMINATION

14 BY MR. BERNET:

15 Q. Good afternoon, Mr. Smith. My name is
16 Richard Bernet, counsel for Commonwealth Edison. I
17 just have a few questions for you.

18 Constellation has provided whole
19 requirements wholesale electric service in the
20 states of Maine, Massachusetts, New Jersey, and
21 Maryland. Isn't that right?

22 A. That's correct.

1 Q. And Constellation also participated in the
2 design of the New Jersey auction?

3 A. Yes.

4 Q. Directing your attention to lines 81
5 through 89 of your direct testimony, let me know
6 when you get there.

7 A. Okay.

8 JUDGE WALLACE: What were those lines?

9 MR. BERNET: I'm sorry. This cross applies in
10 both dockets, but my reference to the testimony will
11 be in the ComEd in, the testimony admitted in the
12 ComEd case, 81 through 89 his direct.

13 Q. Now, you testified -- are you there?

14 A. Yes, I am.

15 Q. You testified that the, there's a 30-day --
16 you know there's a 30-day signup window for the
17 CPP-A auction products. Right?

18 A. I'm aware that's what was proposed, yes.

19 Q. And you testified that there's a premium,
20 there would be a premium included in the bid price
21 associated with that 30-day window. Isn't that
22 right?

1 A. There very well could be, and I want to be
2 very careful here. This has nothing to do with the
3 auction itself. There's nothing inherent in an
4 auction mechanism that would cause prices to
5 necessarily rise.

6 The point of this piece of my testimony is
7 simply that if suppliers bidding into the auction
8 are required to hold open that price for a period of
9 time in order for customers to opt into that price,
10 that's in that pricing implication.

11 Q. And if that period is longer than 30 days,
12 would you expect that pricing implication to be
13 greater?

14 A. As a general matter, one would expect
15 that. There's nothing said that would be for
16 certain, but certainly as a general matter it would
17 be expected that the long a supplier's required to
18 leave his price open as an option, the more
19 expensive that becomes.

20 Q. Directing your attention to lines 93
21 through 95 of your direct testimony.

22 A. I'm here.

1 Q. You testified that it's Constellation's
2 belief that there will be substantial participation
3 in the ComEd auction if it's adopted by the
4 Commission?

5 A. Yes.

6 Q. Can you explain the basis for that
7 conclusion?

8 A. The conclusion is based simply on the
9 participation in other competitive procurement
10 processes that have occurred, particularly in the
11 eastern part of PJM.

12 The interest that the supplier community
13 has shown in this process to date, this is the kind
14 of product that the supplier community is familiar
15 with.

16 It is something that we as a community know
17 how to price, and it's the competition and the
18 ability to bring value to customers that will bring
19 suppliers to the process.

20 Q. Thank you.

21 Directing your attention to your rebuttal
22 testimony, lines 13 to 16.

1 A. Okay.

2 Q. You testify that the ComEd proposal will
3 bring the benefits of competition to those customers
4 who do not or cannot obtain their electric service
5 from an alternative retail electric supplier.

6 How is it that those customers will receive
7 the benefits of competition through ComEd's
8 proposal?

9 A. I believe that ComEd's proposal is really
10 competition in the purest sense.

11 And what I mean by that is, you know, there
12 are always going to be for one reason or another
13 certain customers who do not or cannot go out to the
14 market themselves and seek a competitive price.

15 This brings that product directly to them.
16 And what it does is it creates downward pressure on
17 prices. Otherwise, these customers generally may
18 not have the opportunity to be in a market where
19 there is a downward pressure on price.

20 Q. So it gives those customers access to the
21 wholesale market?

22 A. Absolutely.

1 Q. Directing your attention back to your
2 direct testimony at lines 257 through 282.

3 A. Okay.

4 Q. In that portion of your testimony you're
5 suggesting that ComEd add a paragraph to the
6 supplier forward -- supply forward contracts to deal
7 with the eventuality of a new wholesale tax. Is
8 that right?

9 A. That's correct.

10 Q. You're not aware of any tax that is
11 currently being imposed on either energy or capacity
12 at the wholesale level. Is that right?

13 A. Is your question to Illinois or anywhere?

14 Q. Anywhere, you personally.

15 A. I did respond in my request for, your
16 discovery request that there is a tax in Ohio that
17 is interesting in this regard. I'm certainly not a
18 tax expert.

19 But I do understand there's a new
20 commercial-activity tax in Ohio that could land --
21 and it's still being analyzed -- on a wholesale
22 supplier of electricity.

1 Q. But you're not aware of any tax being
2 imposed directly on either energy or capacity at the
3 wholesale level?

4 A. No, I'm not.

5 Q. Directing your attention to your rebuttal
6 at lines 182 through 192, I'm not going to ask you
7 about all these pages, but I just want to --

8 A. Okay. I'm here.

9 Q. So in that portion of your testimony you
10 express some concern about mitigation plan that
11 ComEd has proposed. Is that right?

12 A. That's correct.

13 Q. And then the last area I want to direct
14 your attention to is your direct testimony at
15 lines 136 through 157.

16 A. Okay.

17 Q. And in that portion of your testimony you
18 are expressing some concern. You're making a
19 recommendation that the ComEd tariffs be slightly
20 modified to further clarify the scope of the
21 Commission review after the auction. Is that right?

22 A. That's correct.

1 Q. So as far as Constellation is concerned, we
2 have the new paragraph, the additional paragraph to
3 deal with the tax issue, your concerns on the
4 mitigation plan and your concern about modification
5 to the tariff to deal with the scope of the
6 Commission's authority.

7 Those are remaining issues for
8 Constellation. Is that right?

9 A. I believe that's correct.

10 Q. And if the Commission rejects all three of
11 those recommendations, is it your testimony that
12 Constellation would still participate in the
13 auction?

14 A. These are things that would go to providing
15 additional clarity to the supplier community. It
16 is -- I think if the Commission were to implement an
17 auction structure along the lines of what has been
18 proposed by both ComEd and Ameren, Constellation
19 would be extremely interested in that and would
20 intend to participate.

21 MR. BERNET: Thank you. I have nothing
22 further.

1 JUDGE WALLACE: Mr. Fosco, you had no cross?

2 Any redirect?

3 MS. KAREGIANES: Just one question, Your
4 Honor.

5 REDIRECT EXAMINATION

6 BY MS. KAREGIANES:

7 Q. Mr. Smith, you testified that you are not
8 aware of any taxes that are currently being imposed
9 on wholesalers.

10 Could you explain what your concern is
11 about new taxes that may be imposed in the future by
12 some government body?

13 A. Sure.

14 That's simply an additional risk. And the
15 paragraph we're suggesting for the supply forward
16 contract would simply provide a mechanism whereby
17 the Commission could review a new tax that would
18 land on a wholesale supplier and determine whether
19 that tax should be passed on to customers.

20 It doesn't mean that the tax necessarily
21 would be, but it provides a mechanism for that to be
22 at least analyzed. Certainly you can conceive of a

1 situation where there would be a new tax, one that
2 we haven't even thought of today. This is what this
3 is designed to address.

4 Q. And what would be the risk if the language
5 were not included in the tariff?

6 A. Just simply lack of clarity. You could
7 have a new tax that lands on a wholesale supplier
8 and that, you know, could create a situation or it
9 could be unclear where it lands and create a
10 situation where the interpretation of the contract
11 is unfair.

12 MS. KAREGIANES: I have nothing further.

13 JUDGE WALLACE: No recross.

14 Thank you, Mr. Smith. You may step down.

15 MR. SMITH: Thank you.

16 (Witness excused.)

17 MS. KAREGIANES: Thank you very much for
18 accomodating us.

19 JUDGE WALLACE: We'll break for lunch and come
20 back at 1:15 or so.

21 (Whereupon a lunch recess
22 was taken.)

1 AFTERNOON SESSION

2 (Whereupon the proceedings were
3 hereinafter stenographically
4 reported by Lori Bernardy.)

5 JUDGE WALLACE: We'll begin our afternoon
6 session. We have a new court reporter so when you
7 start talking, please indicate who you are.

8 JUDGE JONES: We might have some additional
9 appearances this afternoon, too.

10 MR. NEILAN: Did Christina enter our appearance
11 this morning?

12 JUDGE WALLACE: Yes, she did.

13 MR. NEILAN: Thank you.

14 MR. TROMBLEY: Chris Flynn entered my
15 appearance this morning.

16 JUDGE WALLACE: And what was your name?

17 MR. TROMBLEY: Peter Trombley.

18 MS. HEDMAN: In 05-0159 we made a statement on
19 the record renewing and restating our objection to
20 references to the Post 2006 Workshop process.

21 That issue came up again this morning
22 during Miss Satter's presentation as a witness, and

1 I'm wondering if you would like it -- you'd probably
2 like to make it on the record in 05-0160 as well.

3 Would this be appropriate time?

4 JUDGE JONES: You can go ahead and do that.

5 MS. HEDMAN: The People of the State of
6 Illinois restate their objection to references to the
7 Post 2006 Initiative in Docket Numbers 05-0160, 61,
8 62 Consolidated on the grounds set forth in the
9 Motion in Limine that we filed jointly with CUB and
10 the Environmental Law And Policy Center on
11 September 6th, 2005.

12 For the record, we renew our objection
13 to admission of this material on the grounds that the
14 Commission issued a workshop preamble at the start of
15 the Post 2006 Initiative which stated:

16 In order to facilitate free and open
17 discussions, the stakeholders wish to assure that
18 statements made, positions taken and document and
19 papers provided by the stakeholders in the Post 2006
20 Initiative Process will not be used by stakeholders
21 in any subsequent litigations, including
22 Administrative Proceedings before the Illinois

1 Commerce Commission and the Federal Energy Regulatory
2 Commission and other Federal, state, or local
3 governmental authorities.

4 For the record, we note that because
5 of people through the office of the Attorney General
6 and other parties relied on this premise as a
7 condition of participation in the workshop.

8 The Commission is estopped from
9 considering material relating to the workshop,
10 particularly characterizations of the views of the
11 participants, individually or collectively, in this
12 or any other Docket. And Ameren and other parties
13 are barred from submitting Post 2006 Initiatives
14 material in this or any other proceeding.

15 The people relied, apparently to their
16 detriment, on the promise made in this preamble.

17 And in the other, the 05-0159 Docket,
18 we made that as a blanket objection and there was an
19 agreement that we would not renew it each time the
20 Post 2006 Process was mentioned, and we would wish to
21 do that again in these consolidated Dockets.

22 JUDGE JONES: Thank you. Do you need to hear

1 something back from the other parties with respect to
2 the blanket agreement aspect of that or is it just
3 understood?

4 MS. HEDMAN: Either from the other parties or
5 from your Honor.

6 JUDGE JONES: I realize that the Motion itself
7 has been filed in writing, as it was in -0159. There
8 were several responses in writing in that Docket and
9 there may well be in -0160 et cetera as well.

10 And in the meantime, there is a
11 blanket objection to all those references in the
12 witnesses' testimony.

13 Does anyone have any comments with
14 respect to that at this time? Let me first say that
15 we will not really take argument on that written
16 Motion but just the status of the blanket objection
17 or the status of the Motion in the meantime.

18 Any comment on that?

19 MR. TROMBLEY: No, your Honor.

20 JUDGE JONES: So that will be considered a
21 blanket objection and a continuing objection for
22 purposes of these proceedings similar to -0159, the

1 once difference being there have been no responses
2 filed yet in -0160 and no ruling on the Motion
3 itself.

4 MS. HEDMAN: Thank you, your Honor.

5 JUDGE WALLACE: Anything else? Dr. LaCasse,
6 would you raise your right hand.

7 (Whereupon the Witness was sworn
8 by the Administrative Law
9 Judge.)

10 D R. C H A N T A L E L A C A S S E,
11 having been first duly sworn by the Administrative
12 Law Judge, witnesseth and saith as follows:

13 JUDGE WALLACE: Thank you. Mr. Rippie?

14 MR. RIPPIE: Thank you.

15 DIRECT EXAMINATION

16 BY MR. RIPPIE:

17 Q. Dr. LaCasse, I'm going to ask you some
18 questions concerning Docket 05-0159 this morning.
19 But before I do, in both dockets could you please
20 spell your full name for the court reporter.

21 A. My name is Chantale LaCasse,
22 C-H-A-N-T-A-L-E is the first name. The last name is

1 L-A-C-A-S-S-E.

2 Q. Dr. LaCasse, have you prepared or had
3 prepared under your direction and control Surrebuttal
4 Testimony for submission to the Illinois Commerce
5 Commission in Docket 05-0159?

6 A. I have.

7 Q. And is this Surrebuttal Testimony
8 designated as Commonwealth Edison Exhibit 19.0?

9 A. That's correct.

10 Q. And attached thereto are five -- are there
11 attached thereto five -- sorry, six exhibits
12 designated ComEd Exhibits 19.1 through 19.6?

13 A. That's correct.

14 Q. And, Dr. LaCasse, was there also an errata
15 version of Exhibit 19.0 prepared?

16 A. Yes, there was.

17 MR. RIPPPIE: Your Honor, for the record
18 Exhibits 19.0 through 19.6 were originally filed on
19 e-Docket on August 19, 2005 with Batch Number 61487.
20 The corrected version of 19.0 was filed on August the
21 25th with a Docket Number of 61668.

22 Q. Dr. LaCasse, if I were to ask you the

1 questions that appear on Exhibit 19.0 corrected,
2 would you give me the same answers that appear today?

3 A. Yes, I would.

4 Q. And are those answers true and correct to
5 the best of your knowledge and belief?

6 A. Yes they are.

7 Q. Do you have any other additions or
8 corrections you wish to make to those Exhibits?

9 A. No.

10 Q. Dr. LaCasse, did you also prepare or have
11 prepared under your direction and control Rebuttal
12 Testimony for submission in Docket 05-0159?

13 A. Yes.

14 Q. And was that testimony designated ComEd
15 Exhibit 11.0?

16 A. That's correct.

17 Q. And there were also errata prepared to
18 11.0?

19 A. Yes, there was.

20 Q. Appended to that testimony are exhibits.
21 Are those exhibits identified as Commonwealth Edison
22 Exhibits 11.1 through 11.7?

1 A. Yes.

2 MR. RIPPIE: All right, your Honor, for the
3 record the proposed testimony in Exhibits were filed
4 on July 6, 2005 with e-Docket Number 60092, and the
5 errata-corrected version of 11.0 was filed on
6 August 11th with Number 61244.

7 Q. Dr. LaCasse, except as maybe updated in the
8 Surrebuttal Testimony that we previously discussed,
9 if I were to ask you the questions that appear on
10 ComEd Exhibit 11.0 corrected today, would you give me
11 the same answers?

12 A. Yes, I would.

13 Q. And are those answers true and correct to
14 the best of your knowledge and belief?

15 A. Yes, they are.

16 Q. Do you have any additional corrections you
17 wish to make to those Exhibits?

18 A. No.

19 Q. Did you also prepare or have prepared under
20 your direction and control Direct Testimony for
21 submission to the Illinois Commerce Commission in
22 this Docket?

1 A. Yes.

2 Q. Is that Direct Testimony designated
3 Commonwealth Edison Exhibit 4.0?

4 A. Yes.

5 Q. Are there exhibits appended thereto that
6 have been designated Exhibit 4.1 through 4.9?

7 A. Yes.

8 MR. RIPPIE: Your Honor, for the record, those
9 were filed on February 25, 2005 under e-Docket
10 Number 55889.

11 Q. Dr. LaCasse, do you have any corrections
12 you wish to make to any of the Exhibits 4.0 through
13 4.9?

14 A. There is a correction for Exhibit 4.1.

15 Q. And what is that correction on Exhibit 4.1?

16 A. There is a correction to the list of
17 countries that are shown and have used a similar
18 auction format.

19 Q. Can you state the correction, please?

20 A. I'm sorry, I can't. I only have the
21 amended in front of me.

22 MR. RIPPIE: Your Honors, there's a similar

1 correction that's going to be upcoming in the Ameren
2 Docket. That docking is already filed in the Ameren
3 Docket and we expect it will be filed in the ComEd
4 Docket today.

5 If any of the parties need copies of
6 that exhibit, I can make sure they're available with
7 the corrected form.

8 Is that satisfactory?

9 JUDGE WALLACE: Yes.

10 JUDGE JONES: Yes.

11 BY MR. RIPPPIE:

12 Q. With the exception of that correction to
13 the list of countries that appears in 4.2 and except
14 as updated or corrected in the Rebuttal and
15 Surrebuttal Testimonies that we've previously
16 discussed, if I were to ask you the same questions
17 that appear in 4.0, would you give me the same
18 answers?

19 A. Yes.

20 Q. And are they true and correct to the best
21 of your knowledge and belief?

22 A. Yes, they are.

1 MR. RIPPIE: Your Honors, at this time I would
2 offer into evidence in Docket 05-0159 Commonwealth
3 Edison Exhibits 4.0 through 4.9, and we will be
4 making the correction on e-Docket for the Exhibit 4.2
5 that we just discussed, as well as Commonwealth
6 Edison Exhibit 11.0 corrected and 11.6 through 11 --
7 I'm sorry, 11.0 corrected and Exhibits 11.1 through
8 11.7, and Exhibit 19.0 corrected and 19.1 through
9 19.6.

10 JUDGE WALLACE: On Exhibits 19.1 through 19.6
11 are any of those corrected?

12 MR. RIPPIE: No, they were not.

13 JUDGE WALLACE: Are there any objection to the
14 Exhibits offered by ComEd?

15 (No audible response.)

16 JUDGE WALLACE: Hearing none, Exhibits 4.0,
17 4.1, 4.2 amended, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9,
18 11.0 corrected, 11.1, 11.2, 11.3, 11.4, 11.5, 11.6
19 and 11.7, 19.0 corrected, 19.1, 19.2, 19.3, 19.4,
20 19.5, and 19.6 are admitted.

21 (Whereupon ComEd Exhibit Numbers
22 4.0, 4.1 Amended, 4.2, 4.3,

1 4.4, 4.5, 4.6, 4.7, 4.8, 4.9,
2 11.0 Corrected, 11.1, 11.2,
3 11.3, 11.4, 11.5, 11.6, 11.7,
4 19.0 Corrected, 19.1, 19.2,
5 19.3, 19.4, 19.5 and 19.6 were
6 admitted into the record in
7 Docket 05-0159.)

8 THE WITNESS: If I may, your Honor, it's 4.1
9 that's corrected and not 4.2. I believe Mr. Rippie
10 misspoke.

11 MR. RIPPIE: I take full credit for that error.

12 JUDGE WALLACE: On Exhibits 19.1 through 19.6,
13 were any of those corrected?

14 MR. RIPPIE: No, they were not.

15 JUDGE WALLACE: All right, are there any
16 objections to the Exhibits offered by ComEd? All
17 right then, I had written it down as 4.1 and then I
18 changed it.

19 MR. RIPPIE: I mislead accidentally.

20 JUDGE WALLACE: Going back, it is 4.1 amended
21 and that's still admitted.

22 MR. RIPPIE: That's all the questions I have

1 for Dr. LaCasse in 05-0159.

2 MR. TROMBLEY: Good afternoon, Dr. LaCasse.

3 CROSS-EXAMINATION

4 BY MR. TROMBLEY:

5 Q. These questions apply only to the Ameren
6 Company Docket, Consolidated Dockets 05-160, 05-161,
7 and 05-162.

8 Have you prepared or cause to be
9 prepared under your direction pre-filed Direct
10 Testimony for submission to the Illinois Commerce
11 Commission and the Ameren Company dockets?

12 A. Yes, I have.

13 Q. Is that testimony designated Respondent 6.0
14 with attachments thereto designated thereto
15 Respondent's 6.1 revised, 6.2, 6.3, 6.4, 6.5, 6.6,
16 6.7, 6.8 and 6.9?

17 A. Yes.

18 MR. RIPPIE: For the record, Your Honor, most
19 of these were filed in e-Docket on February 28th as
20 we've just discussed the revised version of
21 Exhibit 6.1 was filed, e-filed this morning.

22

1 BY MR. TROMBLEY:

2 Q. Do you have any additions, corrections or
3 clarifications connected to the testimony?

4 A. No.

5 Q. If I were to ask you the same questions
6 that appear in that testimony today, would you give
7 me the same answers?

8 A. Yes, I would.

9 Q. Are these answers true and correct to your
10 knowledge and belief?

11 A. Yes, they are.

12 Q. Have you also prepared or caused to be
13 prepared under your direction or control e-filed
14 Rebuttal Testimony for submission to the Illinois
15 Commerce Commission in the Ameren Company's Dockets?

16 A. Yes.

17 Q. Is that testimony designated Respondent's
18 Exhibit 12.0 with attachments thereto designated
19 Respondent's 12.1 through 12.7?

20 A. Yes.

21 MR. RIPPIE: For the record, your Honors, these
22 too were filed on e-Docket on July 13, 2005.

1 BY MR. TROMBLEY:

2 Q. Do have any additions, corrections or
3 clarifications to that testimony?

4 A. No.

5 Q. If I were to ask you the same questions
6 this appear here in this testimony, would you give me
7 the same answers?

8 A. Yes, I would.

9 Q. Are those answers true and correct to your
10 knowledge and belief?

11 A. Yes, they are.

12 Q. Have you also prepared or cause to be
13 prepared pre-filed Surrebuttal Testimony for
14 submission to the Illinois Commerce Commission?

15 A. Yes.

16 Q. Is that testimony designated Respondent's
17 Exhibit 19.0 with attachments designated thereto
18 designated 19.1 through 19.5?

19 A. Yes.

20 MR. TROMBLEY: For the record, your Honors,
21 those documents were filed on e-Docket on
22 August 29th.

1 BY MR. TROMBLEY:

2 Q. Do you have any additions, corrections or,
3 clarifications to that testimony?

4 A. No.

5 Q. If I were to ask you the same questions
6 that appear in that testimony, would you give me the
7 same answers?

8 A. Yes, I would.

9 Q. Are those answers true and correct to your
10 knowledge and belief?

11 A. Yes, they are.

12 MR. TROMBLEY: I have no further questions.

13 At this point, I would offer into
14 evidence in Dockets 05-160, 05-161, 05-0162 the
15 following -- in those Dockets the following
16 Respondent's Exhibits: 6.0, 6.1 amended, 6.2, 6.3,
17 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 12.0, 12.1, 12.2, 12.3,
18 12.4, 12.5 part A and B, 12.6, and 12.7, and also
19 Exhibits 19.0 and 19.1, 19.2, 19.3, 19.4 and 19.5.

20 JUDGE JONES: Thank you. Are there any
21 objections to the admission of those Exhibits?

22 With respect, Miss Hedman, to the

1 Attorney General's standing objections, is it your
2 intent that those apply to whichever of the
3 testimonies that are listed on the Motion -- with the
4 Motion, that those objections would be applicable to
5 those portions of the witness's testimony?

6 MS. HEDMAN: Yes. Do I need to read those into
7 the record?

8 JUDGE JONES: Why don't -- I don't -- unless
9 somebody needs to hear exactly what they are, I think
10 they're listed on the attachment to the Motion. So
11 those would be the subject of the objection that's in
12 the Motion, correct?

13 MS. HEDMAN: Yes, and the standing objection we
14 made earlier this afternoon.

15 JUDGE JONES: Right. Prefix-wise on these
16 Ameren Exhibits, do you want these to be known as
17 Ameren?

18 MR. TROMBLEY: Your Honor, we have them marked
19 as Respondent's Exhibits, R-e-s-p Exhibits.

20 JUDGE JONES: Marked where?

21 MR. TROMBLEY: On the Exhibits themselves in
22 the upper right-hand corner of the page.

1 JUDGE JONES: Okay.

2 Then they will be identified in that
3 manner, R-E-S-P.

4 Off the record.

5 (Whereupon there was then had an
6 off-the-record discussion.)

7 JUDGE JONES: There was a short off-the-record
8 discussion for the purposes indicated, mainly related
9 to the fact that the Ameren Company started out as
10 three separate proceedings, so the documents in that
11 opening round appeared separately in each of those,
12 although they for the most part appear to be
13 identical, at least most of the witnesses.

14 But for today's purposes, we just have
15 the one witness on the stand and we will just admit
16 them as they have been offered to the extent that
17 there's some of them subject to objections, rather
18 than take up unnecessary time today to figure out
19 that particular minor problem.

20 So with that, let the record show that
21 the following Exhibits offered by the Ameren
22 Utilities are admitted into the evidentiary record,

1 some subject to objections which I will note. If I
2 miss any or misstate any, interrupt me and we'll
3 straighten it out.

4 The first of these as noted is
5 Respondent's Exhibit 6.0, the Direct Testimony filed
6 February 28, 2005. That is admitted subject to the
7 pending Motion filed by the Attorney General.

8 (Whereupon Respondent's Exhibit
9 Number 6.0 was admitted into
10 the record in Docket 05-0160,
11 0161, 0162.)

12 JUDGE JONES: Also admitted is Respondent's
13 Exhibit 6.1 amended. It bears a file date of
14 September 8, 2005. The rest of the six series
15 including 6.0 has a file date of February 28, 2005
16 and includes Respondent's Exhibits 6.2, 6.3, 6.4,
17 6.5, 6.6, 6.7, 6.8 and 6.9.

18 Any questions so far?

19 (Whereupon Respondent's Exhibits
20 6.1 Amended, 6.2, 6.3, 6.4,
21 6.5, 6.6, 6.7, 6.8, and 6.9
22 were admitted into the record

1 in Docket 05-0160, 0161, 0162.)

2 JUDGE JONES: Next is the Rebuttal Testimony of
3 Dr. LaCasse. Respondent's Exhibit 12.0 Rebuttal
4 Testimony filed July 13, 2005 is admitted into the
5 record subject to the aforementioned motion.

6 (Whereupon Respondent's Exhibit
7 Number 12.0 was admitted into
8 the record in Docket 05-0160,
9 0161, 0162.)

10 JUDGE JONES: Also admitted at this time are
11 Respondent's Exhibits 12.1, 12.2, 12.3, 12.4, 12.5 A,
12 12.5 B, 12.6, and 12.7, all with a file date of
13 July 13, 2005.

14 (Whereupon Respondent's Exhibit
15 Numbers 12.1, 12.2, 12.3, 12.4,
16 12.5A, 12.5B, 12.6, and 12.7
17 were admitted into the record
18 in Docket 05-0160, 0161, 0162.)

19 JUDGE JONES: Lastly, Surrebuttal Testimony of
20 Dr. LaCasse, Respondent's Exhibit 19.0 is admitted as
21 filed on August 29, 2005.

22 (Whereupon Respondent's Exhibit

1 Number 19.0 was admitted into
2 the record in Docket 05-0160,
3 0161, 0162.)

4 JUDGE JONES: Also admitted from that filing
5 are 19.1, 19.2, 19.3, 19.4, and 19.5 all filed on
6 August 29, 2005. Those are admitted as Respondent's
7 Exhibits.

8 (Whereupon Respondent's Exhibit
9 Numbers 19.1, 19.2, 19.3, 19.4,
10 and 19.5 were admitted into the
11 record in Docket 05-0160, 0161,
12 0162.)

13 JUDGE JONES: 19.5 says "Confidential Report."
14 Is that a public filing or proprietary? What's the
15 status of that? I'm just looking at the title of it.

16 MR. TROMBLEY: Your Honor, I believe it's a
17 public document.

18 JUDGE JONES: Thank you.

19 Any questions about those? If there
20 are not, that's good. I think we're ready to proceed
21 with the cross-examination.

22 JUDGE WALLACE: Would you like to begin,

1 Miss Hedman?

2 MS. HEDMAN: I would. Thank you, your Honor.

3 JUDGE WALLACE: You may do so.

4 CROSS-EXAMINATION

5 BY MS. HEDMAN:

6 Q. Good afternoon, Dr. LaCasse, my name is
7 Susan Hedman.

8 A. Glad to meet you.

9 Q. I am with the Office of the Attorney
10 General, and I represent the People of the State of
11 Illinois in all four of these Dockets.

12 Dr. LaCasse, on page two, line 35 of
13 your Direct Testimony in the ComEd document and page
14 two, line 42 of your Direct Testimony -- excuse me,
15 page two, line 35 in the Ameren Docket, and page two,
16 line 42 of your Direct Testimony in the ComEd Docket,
17 you note that you published a professional paper in
18 the RAND Journal of Economics; is that correct?

19 A. Yes.

20 (Whereupon Counsel hands out
21 Exhibit to the Court and
22 Counsel.)

1 BY MS. HEDMAN:

2 Q. Dr. LaCasse, do you have in front of you an
3 article that has been marked as AG Cross Exhibit 11?

4 A. I think --

5 Q. The document in front of you has been
6 marked as AG Cross Exhibit 11.

7 Is this the article which you authored
8 which appeared in the RAND Journal of Economics?

9 A. It is.

10 Q. Dr. LaCasse, what is the title of that
11 article?

12 A. The title Bid Rigging and the Threat of
13 Government Prosecution.

14 Q. Dr. LaCasse, could you please read the
15 abstract that appears in italics on the first page of
16 that article?

17 A. In this article, I develop a simple bidding
18 model in which collusion is endogenous. Buyers at a
19 first-price sealed-bid auction decide whether to rig
20 their bids given that they faced a threat of
21 Government prosecution.

22 A legal authority chooses whether to

1 investigate the buyers on the basis of the bids
2 tendered. In the unique sequential equilibrium of
3 the game, buyers rig their bids with positive
4 probability, but the legal authority can never,
5 ascertain on the basis of the bids alone, that a
6 conspiracy has formed.

7 Q. Dr. LaCasse, could you please read the
8 first paragraph of the Section entitled Conclusion
9 which begins at the bottom of page 409 and continues
10 to the top of page 410 of this article.

11 A. The first paragraph; is that correct?

12 Q. Yes.

13 A. A legal authority in charge of enforcing
14 anti-trust legislation has three tasks: detecting an
15 infraction, investigating the offense, and
16 prosecuting the offenders.

17 In case of bid rigging, unless one of
18 the conspiracy members conveniently decides to
19 squeal, the presence of a conspiracy must be detected
20 on the basis of the offers tendered.

21 The investigation can reasonably be
22 expected to provide proof the existence of an

1 collusive arrangements when the coordination of bids
2 necessitates communication among the conspirators.

3 Such proof, in turn, makes a
4 prosecution likely to succeed. Conspirators can try
5 to avoid the penalty associated with the successful
6 prosecution in one of two ways:

7 by making the detection of bid rigging
8 difficult or by make it unlikely that wrong doing
9 will be uncovered by the investigation into the
10 buyer's activities.

11 In this article, because I assume that
12 an investigation by the legal authority, accurately
13 determine the guilt or innocence of the buyers, the
14 only route open to a conspiracy wanting to avoid
15 Government prosecution is to remain undetected.

16 Two elements in the buyers' strategy
17 allow them to accomplish this. First, they do not
18 always collude.

19 Second, their bidding strategy is
20 devised to mimic competitive bidding: the losing
21 offers and the number of buyers active at the auction
22 perfectly imitates the behavior of competitive

1 agents.

2 And although the winning bid is not
3 uninformative, it does not allow the legal authority
4 to detect the presence of a conspiracy. In
5 equilibrium in, the legal authority never believes
6 that a cartel is present with probability one.

7 Q. Thank you. On page 64 of your Direct
8 Testimony in the ComEd Docket, I believe you
9 discussed load caps at lines --

10 JUDGE WALLACE: Miss Hedman, if you wouldn't
11 mind pulling that microphone a little closer.
12 Somehow we got our microphones unbalanced on that
13 side of the table.

14 BY MS HEDMAN:

15 Q. On page 64 of your Direct Testimony in the
16 ComEd Docket, I believe you discuss load caps at line
17 1525 through 1531; is that correct?

18 A. I discussed the load cap as it's set in New
19 Jersey compared to the Illinois proposal, that's
20 correct.

21 Q. And do you state that a higher load cap has
22 the potential benefits of providing additional

1 opportunity for some entities to bid in a greater
2 amount of supply, but it has the potential cost of
3 increasing the ability of bidders to withdraw supply
4 profitably; is that correct?

5 A. That's correct.

6 Q. And on page 45 of your Direct Testimony in
7 the Ameren Docket, at lines 1013, page 45, 1013
8 through 1018.

9 You state that a load cap limits the
10 influence that any one bidder can have on the results
11 of the auction and that lowering the amount of supply
12 offered by a single bidder weakens the ability of
13 that bidder to withdraw supply profitably; is that
14 correct?

15 A. That's correct.

16 Q. Now I'd like to ask you some hypothetical
17 questions regarding the impact of a load cap in an
18 auction, where a bidder is attempting to increase
19 profitably by removing the product.

20 Suppose that a bidder's true interest
21 at a given price is 15 tranches. Would it be possible
22 for this bidder to stop it by withdrawing supply from

1 the auction?

2 For instance, bidding ten tranches
3 instead of 15 to keep the price artificially high.

4 A. No, not in the abstract as you have asked
5 the question.

6 Q. Would there be a situation in which it
7 would be possible?

8 A. To be able to withdraw tranches profitably,
9 it has to be that the reduction in supply that the
10 bidder has is more than compensated by either the
11 increase in price, and to be able to effect that
12 increase in price, the bidder has to have sufficient
13 information about the excess supply that's left in
14 the auction.

15 Given the rules that are being
16 proposed in the Illinois Auction Proposal, the bidder
17 is not going to have that kind of information on
18 excess supply.

19 Q. So is it your testimony that under the
20 Illinois Auction Proposal that a bidder could never
21 profitably withhold supply?

22 A. Can you rephrase the question, please.

1 Q. Is it your testimony that under the
2 Illinois Auction Proposal that a bidder could never
3 profitably withhold supply?

4 A. Can you explain what you mean by withhold
5 supply?

6 Q. Well, you just defined for me the
7 conditions under which withholding supply could be
8 profitable.

9 Are you saying that those conditions
10 could never exist under the Illinois Auction
11 Proposal?

12 A. What is possible it that it is profitable
13 for a bidder to withdraw a trance at some point
14 including at the end of the auction.

15 Q. And are load caps meant to relieve this
16 type of problem?

17 A. The load cap or an affective way to weaken
18 the profitability of that kind of strategy, yes.

19 Q. So let's consider various hypothetical load
20 caps to examine their effectiveness as a means to a
21 avoid price increase that might occur as a result of
22 anti-competitive withholding behavior that you've

1 just founded?

2 Can we say for purposes of this
3 hypothetical that the bidder that you've just
4 described who might withhold a tranche, initially had
5 eleven tranches in this hypothetical auction for
6 purposes of this hypothetical?

7 A. Is there a question?

8 Q. Well, I'm asking you to accept that as a
9 premise for the hypothetical. You said that a bidder
10 might be able to withdraw a tranches. For purposes
11 of the hypothetical thing, let's say they have eleven
12 and they've withdrawn one can we start from that
13 premise?

14 A. Yes.

15 Q. So if the load cap were set at less than
16 ten ranches, I take it that the affect would be that
17 our hypothetical bidder would bid even fewer tranches
18 from the outset than the bidder intended to bid as
19 part of the original strategy to withhold some supply
20 to raise prices; is that right?

21 A. No.

22 Q. Why not?

1 A. I'd like to make two points: one is that
2 my previous answer just said that it's possible for a
3 bidder to withdraw a tranche at some point in the
4 auction. I'm not sure if her position obstructs the
5 question was exact or not.

6 The second is if the load cap is below
7 ten tranches, then the bidder could not have bid
8 eleven tranches. The auction rooms specify that the
9 bidder has to stay within the load cap at any point
10 in the auction.

11 Q. You're quite correct. So let's say the
12 load caps were set at less than eleven ranches.

13 In that case; would the affect be that
14 the hypothetical bidder would bid even fewer ranches
15 that he originally intended as part of his original
16 strategy to withhold supply to raise ranches?

17 A. I think that you're -- hypothetical that
18 you have is not one that we started with. If the
19 load caps were smaller, by definition the bidder
20 would have to bid fewer tranches. And by definition,
21 there wouldn't be anything else going on. If the
22 load cap is less than eleven tranches, they have to

1 start by bidding less than eleven tranches.

2 Q. And isn't it the case the if they bid even
3 less than their original strategy and their original
4 strategy would have been effective in withholding
5 supply and raising prices, isn't it the case that
6 bidding less would probably result in less supply and
7 even higher prices, and I mean higher than if no load
8 cap were imposed at all?

9 A. There are other effects on the load cap
10 than reducing the amount of supply that come in the
11 auction, including increasing the reliability of the
12 information that the auction manager can use for
13 purposes of the auction volume guidelines, including
14 making strategies such as the one that you appear to
15 be concerned about, less profitable.

16 And such as potentially inducing
17 bidders, smaller and maybe less experienced bidders,
18 from participating in the auction and actually adding
19 to the supply in the auction.

20 Q. And what I'm trying to discuss with you and
21 would like to focus on is where -- at what level a
22 load cap assists in addressing this problem?

1 And for purposes of this discussion, I
2 would like to isolate the variable of withholding
3 supply to increase price and profitably.

4 So if we could just maybe start with
5 that, we'll then add in other variabilities with this
6 hypothetical.

7 So hypothetical -- let's -- if it
8 would be -- let's go back to the assumption that the
9 bidder, the hypothetical bidder, really wants -- his
10 true interest at a given surprise really 15 tranches.

11 But the bidder has figured out that if
12 he withdraws supply from the auction and bids the ten
13 tranches, the price will go up and it will be a
14 profitable strategy.

15 If that were true, in that case what
16 would happen if you set the load cap at less than ten
17 tranches?

18 MR. RIPPIE: I actually have to object to that
19 question. Dr. LaCasse's answer about 15 questions
20 ago was that you couldn't do this because the bidder
21 didn't know what withdraw point was profitable.

22 And Ms. Hedman has just put in the

1 hypothetical exactly the opposite.

2 JUDGE WALLACE: Overruled; go ahead and answer
3 the question.

4

5 THE WITNESS: I'm sorry to have to do this, but
6 I'm going to have to ask you to repeat question.

7 Q. All right. I'm going to pose a
8 hypothetical. I'm then going to ask you three
9 possible load caps to discuss the problem. The
10 problem concreted that we could impose to stop this
11 problem that is created in the hypothetical.

12 The problem created in the
13 hypothetical will be withholding, producing
14 artificially high price.

15 And the question will be: Should the
16 load cap be higher, lower, or the same.

17 I'm trying to understand what the
18 appropriate level for a load cap should be.

19 So the hypothetical is that a bidder
20 has a true interest at a given price in 15 tranches.

21 And the bidder discovers and you're
22 not ceding at this point to be the case, but let's

1 say the bidder could discover that it would be
2 profitable to withdraw supply from the auction by
3 bidding say ten tranches instead of 15 which would
4 keep the price artificially high and that would be
5 profitable.

6 So let's examine the three types of
7 load caps and what would happen in that hypothetical.

8 If the load cap were less than ten
9 tranches would the affect be that the hypothetical
10 bidder would bid even fewer tranches than the bidder
11 intended as part of the original strategy, the
12 strategy being the strategy to withhold and raise
13 prices.

14 A. I can't answer that. I'm sorry. If you
15 change the load cap --

16 JUDGE WALLACE: Just a minute. Why can't you
17 answer the question?

18 I don't know if you're trying to be
19 difficult, but this will take all afternoon if we
20 don't try to be a little cooperative here.

21 THE WITNESS: Could I, your Honor, just answer
22 the general question that set up the --

1 JUDGE WALLACE: No, you have to answer the
2 question that Miss Hedman puts you. It's okay if you
3 can't answer it, but I don't want this bantering
4 about, okay?

5 THE WITNESS: I understand, your Honor. I'm
6 sorry.

7 The reason that I'm having difficulty
8 answering the question is that to have this withdraw
9 of tranches, you have to assume that the action is
10 going to stop the auction at a price other than it
11 would have been.

12 If you change the load cap, you're
13 changing the way the bidder would have been bidding
14 at that point, and I can't answer whether the price
15 is going to do.

16 I can't compare the situations because
17 you're starting with a situation where the bidder is
18 bidding 15 and then goes down to ten. And this
19 action means something to the outcome of the auction.

20 And you want me to compare that
21 situation where the bidder has bid ten all along and
22 I don't know what in your hypothetical the bidder

1 doing.

2 Q. Dr. LaCasse, on page 45 of your testimony
3 in the Ameren case, you say the bidder may be to
4 affect the prices at auction by withdrawing a portion
5 of his supply?

6 A. Right.

7 Q. The bidder that I'm describing to you is
8 such a bidder. For purposes of this hypothetical,
9 let's say that the bidder is withdrawing five
10 tranches out of a total of fifteen?

11 A. Okay.

12 Q. That's the hypothetical.

13 A. And when you put the load cap --

14 Q. There's not a question pending.

15 A. I'm sorry.

16 Q. That's the hypothetical. Now, in your
17 testimony until the ComEd case on page 64, you state
18 that setting a load cap is a question of balance.

19 A higher load cap has potential
20 benefit of providing additional opportunities for
21 some entities to bid in a greater amount of supply.
22 But it has a potential cost of increasing the ability

1 of bidders to withdraw supplies profitably?

2 A. That's correct.

3 Q. Now, I'd like you to answer these
4 hypothetical questions to help determine where that
5 balance lies. The hypothetical involves a bidder who
6 has a true interest in bidding 15 tranches at a given
7 price.

8 A. (Nodded head up and down.)

9 Q. The bidder, like the bidder you described
10 in your testimony, discovers -- believes that by
11 withdrawing supply, it will be profitable.

12 So in this hypothetical the bidder
13 withdraws five tranches. So the question is:

14 If the load cap were set at less than
15 ten tranches, I take it that the affect would be that
16 our hypothetical bidder would bid even fewer tranches
17 than the bidder intended to bid as part of the
18 original strategy, isn't that right?

19 A. It would be right if you assume in addition
20 that the bidder would have to withdraw the same five
21 tranches to have the same affect on the auction.

22 Q. All right. So say a load cap at less than

1 ten doesn't really make sense, because it would
2 result in less supply and even higher prices than if
3 no load cap were imposed; is that correct?

4 A. No. We cannot hold everything constant.
5 It makes --

6 Q. For purposes of this hypothetical, I'm
7 asking you to comment on this variable. We will add
8 in additional variables as the hypothetical
9 continues.

10 So for the purposes of the
11 hypothetical at this simple level, I take it that
12 setting the load cap at less than ten would result in
13 less supply and even higher prices than if there were
14 no load cap, isn't that right?

15 A. It is correct assuming that everybody else
16 is bidding the same and there is a reduction in
17 supply for all of the participants and that the
18 bidder that you're considering takes the same action,
19 yes.

20 Q. Dr. LaCasse, you're an Economist, and
21 you're familiar with the phrase "All things being
22 equal"?

1 A. That's correct.

2 Q. And you're probably even familiar with it
3 in Latin. For purposes of this hypothetical, let's
4 assume all other things being equal.

5 So if the load cap in this
6 hypothetical were set at more than ten tranches, I
7 take it that the load cap would actually have no
8 effect because the hypothetical bidder would be able
9 to bid the same amount as without the load cap; isn't
10 that right?

11 A. I'm sorry. Can I ask you to repeat the
12 question?

13 Q. If the load cap in this situation were set
14 at more than ten tranches, I take it that it would
15 have no effect because the hypothetical bidder would
16 be able to bid the same amount as without a load cap;
17 isn't that right?

18 A. For the hypothetical bidder that bids
19 fifteen and then ten?

20 Q. Yes.

21 A. And everything else is the same?

22 Q. Everything else is the same.

1 A. That's correct.

2 Q. And if the load cap were set at ten
3 tranches, I take it that the outcome would be the
4 same as with the greater than ten tranches load cap.

5 The hypothetical bidder would be able
6 to bid precisely the same amount as without the load
7 cap; is that right?

8 A. Now we're assuming that the bidder is not
9 withdrawing five tranches?

10 Q. No, we're assuming that the bidder's true
11 price, true volume actually at the given price would
12 have been 15, but they're withholding because it's
13 profitable to bid only ten.

14 The same hypothetical as when we
15 began.

16 A. If the bids are all the same then the --
17 would probably descend.

18 Q. So under this hypothetical, a load cap that
19 is less than ten is completely ineffective, you're
20 exacerbating the problem. And a load cap that is
21 more than ten or ten is actually is completely
22 ineffective; isn't that the case?

1 A. Can I ask you to define the problem in your
2 question?

3 Q. The problem that you agreed a few minutes
4 ago that the load cap was trying to solve was the
5 problem of a bidder attempting to withhold supply in
6 order to maximum or increase profitability. It's the
7 same problem that you identify on page 45 of your
8 Testimony in the Ameren case?

9 A. The load cap would not be ineffective if
10 the bidder -- when the bidder is not withholding,
11 that's why I asked you to clarify withdrawing with
12 his drawing tranches.

13 So our hypothetical was 15 tranches,
14 withdrawing five, ten tranches withdrawing five.

15 In the second situation, the bidder to
16 be able to have the things back on the auction, has
17 to withdraw 50 percent of the tranches.

18 That's less likely to be profitable
19 than the first case where the bidder is withdrawing
20 one third of the tranches. That's the way in which
21 the load cap is effective in controlling that
22 particular problem of withdrawing tranches for the

1 purposes of closing the auction.

2 Q. All right, so let's go back and rerun this
3 hypothetical then.

4 Suppose a bidder's true interest at a
5 given price is ten tranches. And the bidder decides,
6 discovers, knows that it would be more profitable to
7 withdraw supply from the auction and bids five
8 tranches instead of ten.

9 Now let's consider the effect of
10 various load caps. If a load cap were set at less
11 than five tranches, I take it that the effect would
12 be that our hypothetical bidders would bid even fewer
13 tranches than in the strategy that the bidder had
14 worked out, and would withhold even more supply, and
15 that would raise prices; isn't that right?

16 A. The effect would be that the bidder
17 wouldn't have to withdraw tranches at the end of the
18 auction for the purposes of keeping the price high,
19 because the bidder would be precluded from doing
20 that.

21 Q. I'm not asking about the end of the
22 auction, I'm asking you about my next category.

1 A. The bidder would have to bid within the
2 load cap, that's correct.

3 Q. And if the load cap is less than five in
4 this new hypothetical, wouldn't that result in even
5 less supply and even higher prices than if no load
6 cap were in place?

7 A. If everything else is the same; you're
8 correct?

9 Q. And if the load cap were set at more than
10 five tranches, I take that it would have no effect
11 because the hypothetical bidder would be able to bid
12 the five tranches that the hypothetical bidder
13 strategy initially originally called for?

14 A. That's correct.

15 Q. And if the load cap were set at exactly
16 five tranches, I take it that the outcome would be
17 the same as with the greater than five tranches. The
18 hypothetical bidder would be able to bid the
19 precisely the same amount as intended in the initial
20 strategy; isn't that correct?

21 A. That's correct.

22 Q. So under this proposed -- under this

1 examination of the load cap, the load cap that is
2 less than the strategy calls for, actually
3 exacerbates the problem.

4 And the load cap that is at or less
5 than -- excuse me, at or greater than the number of
6 tranches the strategy calls for is basically
7 ineffective; isn't that right?

8 A. No, because the problem that you quoted
9 from my testimony is to withdraw supply from the
10 auction, it is not to withhold.

11 Q. And what is your distinction between
12 withdraw and withhold?

13 A. Withdrawing supply is an action that the
14 bidder takes within the load cap, with the belief and
15 possibly the -- with the wanted effect, if you want,
16 of stopping the auction earlier.

17 Q. And that's withdraw or withholding?

18 A. That's withdrawing supply so the bidder is
19 bidding a certain quantity and withdrawing, exiting
20 the tranches from the auction.

21 Q. So would a bidder be able to -- do you
22 think this is a scenario under which a bidder would

1 increase profitability by withholding supply which
2 was my initial question?

3 JUDGE WALLACE: Would someone pull the door
4 closed, please?

5 (Whereupon the door was closed.)

6 JUDGE WALLACE: It seems the construction has
7 moved down the street.

8 THE WITNESS: I don't believe so, no.

9 BY MS. HEDMAN:

10 Q. Where in your testimony do you make a
11 distinction between withholding and withdraw?

12 A. I believe that I only talk about
13 withdrawing. would you allow me to just check?

14 Q. Thank you.

15 A. Thank you.

16 (Whereupon the witness examined
17 exhibits.)

18 THE WITNESS: For example, when I discuss this
19 problem that you were alluding to, for example, on
20 the ComEd Exhibit 11.0, when I talk about the factors
21 that would be used in setting a level for load cap,
22 at line 621 I talk about the influence on the auction

1 results, and I talk about bidders withdrawing
2 tranches in response to falling prices.

3 Q. Okay, so you don't discuss anywhere in your
4 testimony the concept of holding, you discuss only
5 the concept of withdraw?

6 A. That's correct.

7 Q. All right. So let's go through the
8 hypothetical questions again using the word
9 "withdraw" instead of withhold.

10 I believe in some cases I used
11 "withhold" and in some cases, I used withdraw and I
12 was using them synonymously.

13 So we have our hypothetical bidder
14 whose true interest is in ten tranches, and this
15 bidder decides that he or she can profit by
16 withdrawing supply from the auction by bidding five
17 tranches instead of ten.

18 So let's consider the effect of
19 various load caps. If the load cap were set at less
20 than five tranches, I take it that the effect would
21 be that our hypothetical bidder would bid even fewer
22 tranches than the bidder intended as part of the

1 original strategy to withdraw supply to raise prices;
2 is that correct?

3 A. Yes, everything else being equal.

4 Q. So setting a load cap at less than five
5 doesn't make sense, because it would result in less
6 supply and even higher prices than if no load cap
7 were imposed; is that correct, all things being
8 equal?

9 A. That's correct, and it doesn't relate to
10 the problems of withdrawing tranches.

11 Q. If a load cap were set at more than five
12 tranches, I take that it would have no effect; is
13 that correct?

14 But the hypothetical bidder would be
15 able to withdraw the same number of tranches as was
16 intended under the original strategy?

17 A. Do you mean you would withdraw up to five
18 tranches so that he would bid five tranches; is that
19 what you're asking?

20 Q. Yes.

21 A. And everything else being the same.

22 Q. And if the load cap were set at five

1 tranches, I take it that the outcome would be the
2 same again because the hypothetical bidder would be
3 able to bid again precisely the five tranches
4 intended under the original strategy.

5 A. The bidder would not be withdrawing any
6 tranches and the outcome would be the same,
7 everything else being equal?

8 Q. All right, thank you.

9 Now I'd like to examine the extent to
10 which a load cap acts as what you call a compliment
11 to the provision that's for volume reduction.

12 Well, first, could you please explain
13 what you're referring to when you talk about the
14 provisions for volume reduction.

15 One place that that appears is in
16 Exhibit 6.0 at page 45 which will be your Direct
17 Testimony in the Ameren Docket?

18 A. Can you repeat that cite?

19 Q. Yes, I can. On page 45, in the same
20 section I'd been studying before, around 1014, she
21 talks about load caps acting as a compliment to the
22 provisions for volume reduction, and I'm asking what

1 she means by that?

2 A. When you talk about the compliment, are you
3 talking at line 1005, on page 45?

4 Q. No, I was reading the line at 1014 on page
5 45 of Exhibit 6?

6 A. Right.

7 Q. So what do you mean when you say a
8 compliment to the provision for volume reduction?

9 A. What I mean is that there are series of
10 competitive safeguards that have been proposed.

11 One, being the load cap. Another,
12 being the possibility for volume reduction along with
13 the Company's contingency plan, and the third being
14 the Association in Confidential Rules.

15 And those serve all together to
16 provide reasonable protection against
17 anti-competitive behavior in the auction.

18 Q. And so I take it that the premise here is
19 that a load cap would prevent bidders from
20 overstating their interest to feign competitiveness;
21 is that correct?

22 A. It limits their ability to do that, yes.

1 Q. So let's first examine a situation where a
2 load cap is in place, and the auction manager reduces
3 the volume purchased if all bidders bid up to their
4 load caps.

5 Under this scenario, if bidders truly
6 wish to bid up to their load caps, wouldn't honest
7 and aggressive bidders be punished by reducing the
8 quantities that they could sell through the auction?

9 A. Can you repeat the question?

10 Q. Under the scenario where the auction
11 manager reduces the volume, if all bidders bid up to
12 their load caps.

13 If some of those bidders truly wish to
14 bid that amount up to their load cap, wouldn't they
15 be punished if the auction manager would be reducing
16 the quantity that they could sell to the auction?

17 A. A reduction in the volume of the auction
18 does not imply that the load cap is reduced as well.

19 So a bidder could continue bidding the
20 same amount that they would otherwise.

21 Q. But what if everyone can bid up to their
22 load cap?

1 A. Right.

2 Q. And the auction manager reduced the total
3 volume?

4 A. That does not imply that the bidders have
5 to reduce the amount they supply. The load cap is
6 only going to be reduced if the load cap applies in a
7 group in the auction.

8 And if the volume for that group is
9 reduced below the load cap. In general, that will
10 not happen.

11 So if there is a volume reduction, it
12 does not mean that the bidders would be forced to bid
13 less; otherwise, we just pump it. The purpose of the
14 volume reduction is to increase the competitiveness
15 at the auction would be defeated.

16 Q. That's correct, and that's exactly the
17 hypothetical I proposed.

18 If a load cap were put in place and
19 the auction manager doesn't reduce the volume
20 solicited in the auction, don't the bidders bid up to
21 their load caps?

22 The bidders have an incentive to bid

1 up to their load caps for the first couple of rounds
2 of the auction and to delay serious competition until
3 a later round?

4 A. The bidders do not necessarily -- are not
5 literally able to bid the load cap, the whole bid,
6 only up to the level of indicative offer that they
7 put in their part two application. And they will
8 decide in the rounds of the auction whether to bid up
9 to that amount or if conditions have changed or
10 strategies have changed to bid another amount.

11 Q. But during the first couple of the rounds,
12 don't they have an incentive to bid up to their load
13 cap if the auction manager is not going to reduce the
14 volume solicited in the auction?

15 A. I don't see the relationship between their
16 incentive to bid to the load cap, and an auction
17 manager not reducing the volume of the auction.

18 Q. Well, I have given one hypothetical in
19 which the participants know that the load -- that the
20 auction manager does in fact reduce volume.

21 In this hypothetical, the auction
22 manager doesn't reduce the volume.

1 A. It does not change what the bidders will
2 do.

3 Q. All right. If you could, please turn your
4 tanks to page 13 of your Rebuttal Testimony in the
5 ComEd Docket, Exhibit 11.

6 On page 13, if could you go to lines
7 323 to 326. Did you follow -- you offered the
8 following comparison of regulations versus
9 competition.

10 To the extent that a service can be
11 supplied through a competitive auction as opposed to
12 a regulated meaning, the competitive alternative can
13 reasonably be presumed to be more efficient and
14 result in better prices in the long run; is that what
15 you say?

16 A. That is what I say.

17 Q. And also could you look at page 15 of your
18 Rebuttal Testimony in the Ameren case?

19 On page 15 if you look at lines 370 to
20 373, do you offer an opinion that competition should
21 be preferred over regulation as a means to achieve
22 both efficient allocation of resources and prices

1 that track economic reality; is that what you say?

2 A. I say that it's generally acknowledged that
3 regulation is a weaker force than competition.

4 Q. Do economists, particularly game theorists,
5 sometimes attempt to compare allocations of resources
6 under different policy frame works using a concept
7 known as paradors optimality(phonetic)?

8 A. Yes.

9 Q. And generally speaking is paradors
10 optimality achieved when the allocation of resources
11 is such that no individual can be made better off
12 without making some individual worse off?

13 A. Yes.

14 Q. And is it generally accepted that paradors
15 optimal outcomes are prepared over those that are not
16 paradors optimal?

17 A. Paradors optimal outcomes can be compared
18 to other outcomes if these other outcomes can be
19 improved to the paradors optimal one, yes.

20 Q. And have you assessed the proposed auction
21 compared with other procurement approaches using the
22 Paradors criteria?

1 A. No.

2 Q. Now please turn your attention to page 102
3 of your Surrebuttal in the ComEd Docket.

4 A. Could you please repeat page number?

5 Q. It's page 102 in the Surrebuttal in the
6 ComEd Docket, and specifically I'm looking at line
7 2249. I think I have the wrong cite here. Bear with
8 me just one moment.

9 Let's go to page 82 of your
10 Surrebuttal Testimony in the Ameren Docket. And I
11 believe the comparable page in the ComEd Docket is
12 page 80.

13 A. What is the page reference for Ameren
14 Docket?

15 Q. The page reference for Ameren is page 82
16 and I'm specifically interested in lines 1865 through
17 66 in that Docket.

18 Page 189, 1865 through 1866 where you
19 say that in the context of procurement for Ameren
20 using price caps would mean the Commission would
21 preannounce a price and would relinquish any other
22 ability to review the bids.

1 And you make a similar statement in
2 your testimony in the ComEd Surrebuttal. On page 102
3 in lines 2247 through 2249.

4 MR. TROMBLEY: Your Honor, with respect to the
5 Ameren Testimony, is that page 80 as opposed to 82?

6 MS. HEDMAN: It is page 80, you're correct.

7 So the Ameren Testimony citation is
8 page 80, lines 1865 to 1866. The ComEd Testimony is
9 page 102, lines 2247 through 2249.

10 So in those Sections do you suggest
11 that if the Commission were to set price caps as part
12 of an auction, that the Commission would have to,
13 quote, "relinquish any other ability to review bids;"
14 is that correct?

15 A. No. What I'm doing in these Sections is
16 explaining how a game theorist would understand a
17 price cap or reserve price.

18 Q. Are you a game theorist?

19 A. Yes.

20 Q. And is it your understanding that a price
21 cap may be used if the Commission otherwise
22 relinquished or give permission to relinquish any

1 other ability to review bids?

2 A. In the way it is understood in the study on
3 which Professor Reny relies, yes.

4 Q. Did Professor Reny state anywhere in his
5 testimony that the Commission would need to
6 relinquish any other ability to review bids if price
7 caps were used in the auction?

8 A. No.

9 Q. On page 104 of your Surrebuttal Testimony
10 in Docket 05-0159, ComEd Docket, and page 82 of your
11 Surrebuttal Testimony in the Ameren Docket, you
12 attempt to summarize Professor Reny's Testimony and
13 suggest that his testimony focuses on an example
14 where there is, quote, "an absence of bargaining
15 power on the supplier side;" is that correct?

16 A. Could you give me the line reference,
17 please?

18 Q. In the ComEd testimony, on page 104, it is
19 lines 285 through 86. And in the Ameren testimony,
20 it's page 82, lines 1903 to 1904.

21 A. I have the page. Could you please repeat
22 the question?

1 Q. So in those points in your testimony you
2 attempt to summarize Professor Reny's testimony, and
3 I think you suggested his testimony focuses on an
4 example where there is an absence of bargaining power
5 on the supplier side; is that correct?

6 A. Yes.

7 Q. Is that what you say? Could you please
8 show me where in Dr. Reny's testimony it says that
9 there is an absence of power on the supplier side?

10 A. Are you going to give me a copy of his
11 testimony?

12 Q. I only have one copy. I'm giving the
13 witness copies of Dr. Reny's Rebuttal Testimony in
14 both dockets.

15 And the question, again, is where
16 Dr. Reny says that there is an absence of power on
17 the supplier's side in the situation which you posit?

18 A. It's on page 5, lines 124, where he gives
19 the conditions under which his result could fold,
20 including the buyers, the large purchasers, and the
21 buying power. No single supplier has substantial
22 bargaining power relative to the buyer.

1 Q. Substantial bargaining power, he doesn't
2 say absence of bargaining power, does he?

3 A. That is correct.

4 Q. In fact, doesn't his testimony focus on
5 asymmetric conditions where a large buyer like ComEd
6 or Ameren has relatively more bargaining power than
7 suppliers who control the rest of the total amount of
8 generation needed, rather than the situation where
9 the buyers have no bargaining power at all?

10 A. I don't think his testimony shows that, no.

11 Q. Nowhere does his testimony say that he is
12 focusing on a situation where the suppliers have no
13 bargaining power at all; isn't that right?

14 A. That is correct.

15 Q. Now, on page 2 of your ComEd Direct
16 Testimony, lines 31 through 36, you mention that
17 during your doctoral work you were under the
18 supervision of two auction theorists who are
19 currently professors at Cal Tech and Stanford; is
20 that correct?

21 A. That's correct.

22 Q. Your doctoral work was also supervised by

1 Dr. Reny, a University of Chicago Professor, who is
2 testifying in this case on behalf of the People of
3 the State of Illinois; is that right?

4 A. That's correct.

5 MS. HEDMAN: Thank you. I have nothing
6 further.

7 JUDGE WALLACE: Let's take a short five-minute
8 break, please.

9 (Whereupon a short recess was
10 taken.)

11 JUDGE WALLACE: Further cross-examination?

12 CROSS-EXAMINATION

13 BY MR. ROSEN:

14 Q. Ms. LaCasse, my name is Larry Rosen and I'm
15 here on behalf of CUB.

16 JUDGE WALLACE: Not that it matters, but are
17 you going to do separate cross?

18 MR. ROSEN: Yes.

19 JUDGE WALLACE: Okay, fine.

20 MR. ROSEN: And this applies to both cases,
21 both matters.

22 BY MR. ROSEN:

1 Q. When did you have your first contact with
2 ComEd about the auction process?

3 A. It would have been early to mid-2004.

4 Q. Did you come to them or did they come to
5 you?

6 A. I don't recall.

7 Q. And you worked for a company with the
8 acronym of NERA, N-E-R-A?

9 A. That's correct.

10 Q. And there are other consultants at your
11 Company that work with ComEd; is that correct?

12 A. That's correct.

13 Q. Do you know whether any of those
14 consultants or any individuals from NERA approached
15 ComEd about the auction process that is the subject
16 of this proceeding?

17 A. I do not know that.

18 Q. Is it your understanding that you were the
19 first person that talked to ComEd about the auction
20 process?

21 A. That's probably not the case, no.

22 Q. Okay. Do you know who at your Company

1 first talked to ComEd about the auction process?

2 A. No, I don't.

3 Q. Do you know when that happened?

4 A. No, I don't.

5 Q. Do you have a contract with ComEd?

6 A. With ComEd and Ameren.

7 Q. Okay. And what's the date of your

8 contract?

9 A. Pardon me?

10 Q. What's the date of your contract?

11 A. I don't know precisely, but it would be

12 September or October 2004.

13 Q. Who did you first talk to at ComEd about

14 the auction process?

15 A. There was a group that to the best of my

16 recollection that included Bill McNeil, Ann

17 Pramaggiore. There may have been other people there,

18 I don't really recall.

19 Q. Was Mr. Naumann there?

20 A. I don't recall.

21 Q. How about Mr. Juracek?

22 A. No.

1 Q. How about Ms. Moler?

2 A. No.

3 Q. Okay. Other than Mr. McNeil who testified

4 at this proceeding, did you have any other

5 conversations prior to September 2004 with anyone

6 from ComEd that has testified here today?

7 A. Can you repeat the question?

8 Q. Yes. Before September of 2004, did you

9 have any conversations with anyone from ComEd that

10 has also testified here today?

11 A. Yes.

12 Q. And who is that?

13 A. Betsy Moler.

14 Q. Where were you when your first

15 conversations with ComEd took place concerning the

16 auction?

17 A. In their offices in Chicago.

18 Q. And were you invited out there or did you

19 solicit them?

20 A. I don't recall exactly how it happened.

21 Q. How did you know to be out there at that

22 time?

1 A. I believe they invited myself and Jean
2 Mann(phonetic) to make a presentation on the New
3 Jersey auction.

4 Q. So, when you came to ComEd to that ComEd
5 meeting, was it your understanding that they were
6 already -- when you came to that ComEd meeting, was
7 it your understanding that ComEd had already thought
8 about holding an auction in order to procure power?

9 A. I knew that it was one of the auctions that
10 they had, yes.

11 Q. Well, when you held your meeting with
12 ComEd, other than the auction did you discuss any
13 other options with them?

14 A. No. I was there to present the auction as
15 it had happened in New Jersey.

16 Q. Who else was with you from NERA when you
17 came to visit ComEd?

18 A. Jean Mann.

19 Q. And who is he?

20 A. He's a Senior Vice President with NERA in
21 the energy department.

22 Q. Has he ever acted as an auction manager?

1 A. He's part of the auction manager team in
2 New Jersey and in Ohio and --

3 Q. Okay, so the auction managers in the New
4 Jersey auction is a team?

5 A. I'm the Auction Manager and there is a team
6 that is there when the auction is run and others
7 responsible for various aspects of the process from
8 answering bidder questions to qualifications and the
9 running of the auction itself.

10 Q. Okay, and this is the Auction Manager's
11 team?

12 A. The auction manager team, yes.

13 Q. And all the auction -- is every one from
14 your team an employee of NERA?

15 A. No.

16 Q. And how many members are there of the team?

17 A. In New Jersey?

18 Q. Yes.

19 A. It will vary, but it's around ten.

20 Q. And of those ten, how many are NERA
21 employees?

22 A. Seven.

1 Q. And the three or so that aren't, where are
2 they from?

3 A. They're from the software company that we
4 retain for the software that runs the auction on an
5 internal basis.

6 Q. So when you say we retain, you're talking
7 about NERA retaining?

8 A. Yes.

9 Q. All right. So they're independent
10 consultants at NERA as well?

11 A. Yes.

12 Q. In terms of the Auction Manager that's
13 going to run this auction, is that going to be a team
14 too?

15 A. You need a team of people, given the scope
16 of activities. That's what I would expect, yes.

17 Q. So you're going to be the boss?

18 A. I have been proposed to be auction manager,
19 yeah.

20 Q. And if you're selected as the auction
21 manager, you're going to be the boss of the team?

22 A. Yes.

1 Q. And do you think you're going to have the
2 ten people working on your auction team as well?

3 A. It's an approximation, yes.

4 Q. And are they going to be approximately the
5 same ten people that worked in the New Jersey
6 auction?

7 A. Comparable people from NERA, that's
8 correct.

9 Q. Okay. Now, I know you've been here all
10 week, so hopefully I'm going to be able to ask this
11 question based on your sitting through it.

12 I think you saw me a couple of times
13 cross-examine ComEd witnesses on some presentations
14 that were made on August 5, 2005, in New York. Do
15 you remember my doing that?

16 A. No, I can't, I'm sorry.

17 Q. Do you remember my using an exhibit and
18 saying to them do you agree that in the PJM markets
19 producers of power who buy fossil fuel and/or natural
20 gas are driving prices up; do you remember that line
21 of testimony?

22 A. Not precisely, no.

1 Q. Do you know anything about the PJM markets?

2 A. I have a general knowledge, yes.

3 Q. Okay. Is it your understanding in those

4 PJM markets that generators of electricity through

5 the use of natural gas or fossil fuel are driving

6 prices up on the PJM markets?

7 A. You mean, they're at the margin? Is that

8 what you mean?

9 Q. Well, yeah.

10 A. Yes, if you mean they're at the margin.

11 Q. And when you say they're at the margin,

12 what do you mean by that?

13 A. I mean that they -- that they are the last

14 bid to take in to such a price and not given an hour.

15 JUDGE WALLACE: And not given what?

16 THE WITNESS: Hour.

17 MR. ROSEN: Can you repeat that answer for all

18 of us because I'm not certain -- I don't want to

19 mischaracterize.

20 A. I asked whether you meant that they were

21 the last bid taken and given at hour.

22 Q. And your answer was?

1 A. I said if that's what you mean --

2 Q. Yes, that's what I mean. Yeah, we've
3 already established it.

4 And your answer is?

5 A. Yes.

6 Q. You do understand that ComEd has proposed
7 that you be the Auction Manager for the auction
8 that's at issue here, right?

9 A. Yes.

10 Q. And you want to do that, right?

11 A. Yes.

12 Q. At any time has ComEd ever said to you are
13 there other possible auction managers out there that
14 can run our auction?

15 A. Yes.

16 Q. And did you propose other auction managers?

17 A. I proposed other individuals and firms that
18 I knew had the capabilities of doing that, yes.

19 Q. Okay, and who are these people?

20 A. I mentioned, for example, Mr. Parece who
21 testified in this proceeding.

22 Q. On behalf of who?

1 A. On behalf of ComEd.

2 Q. Who else?

3 A. I mentioned that there are other firms,
4 consulting firms, that can do this type of work.
5 LSDG is one, for example, CRA is another.

6 Q. Any others?

7 A. At this point that's what I recall. That's
8 what I think I would have said.

9 Q. But you're hoping that you get picked as
10 the Auction Manager, right?

11 A. Yes.

12 Q. Because if you're picked as the Auction
13 Manager you're going to have a lot more work to do,
14 aren't you, in connection with the auction, assuming
15 that it's approved here?

16 A. Can you repeat the question?

17 Q. Yes. Assuming that the auction process is
18 approved or ComEd goes ahead with the auction and
19 they select you as the auction manager. You're going
20 to have a lot more work ahead of you, aren't you?

21 A. It's an additional project. That's right.

22 Q. Have you made an estimate of how many

1 additional hours you're going to have to spend on
2 this particular auction?

3 A. At this point I would have to take hours
4 out of other projects and have other people who work
5 on this same project on the same scale as I would
6 have in other jurisdictions.

7 Q. How does that translate into hours or
8 amount of days?

9 A. I don't know.

10 Q. It's going to be more than a week?

11 A. Yes.

12 Q. More than two weeks?

13 A. Yes.

14 Q. It's going to be months at a minimum,
15 right?

16 A. Yes.

17 Q. And will it keep the other nine or ten
18 people busy as well?

19 A. They're already busy.

20 Q. And they're going to be busier if you're
21 selected as the auction manager, won't they?

22 A. Yes.

1 Q. Are you charging by the hour?

2 A. Time and materials, yes.

3 Q. You're charging what you call time and

4 materials, right?

5 A. Yes.

6 Q. And that includes your hourly fee?

7 A. Yes.

8 Q. And the nine or ten other people from NERA

9 who will be working on this, are they going to be

10 charging time and material?

11 A. Yes.

12 Q. And does that include their hourly fees?

13 A. Yes.

14 Q. Do you know who Exelon Generation is?

15 A. Yes.

16 Q. And who are they?

17 A. They are a generation company.

18 Q. That's good. And who is their parent

19 company?

20 A. Exelon.

21 Q. And do you know that that's the same parent

22 company that owns ComEd, right?

1 A. Yes.

2 Q. Have you had any conversations with Exelon
3 Generation employees about the auction?

4 A. I don't believe so.

5 Q. Now, what's your understanding as to how
6 Exelon Generation creates the electricity it sells?

7 A. Can you repeat the question?

8 Q. Yes. What is your understanding of the
9 manner in which Exelon Generation creates the energy
10 it sells?

11 A. It has a portfolio generation plants.

12 Q. And do you know what those plants are? Are
13 they gas plants, are they fossil fuel plants or are
14 they nuclear plants?

15 A. I know that there are some nuclear plants.
16 I don't know if they have other types of plants.

17 Q. Do you know in terms of the amount of
18 megawatts or the amount of kilowatts they produce in
19 a year, what percent of that is attributable to the
20 nuclear plants and what percentage is attributable to
21 the other plants?

22 A. No.

1 Q. Someone testified that it was 90 or so
2 percent that was attributable to nuclear plant and
3 ten percent is attributable to fossil fuel or gas
4 driven plants. Do you have any reason to doubt those
5 percentages

6 A. I don't know.

7 Q. Is it your understanding that Exelon
8 Generation may be a bidder in the auction process
9 assuming that's approved?

10 A. I have no knowledge of that but it's
11 certainly possible.

12 Q. Wouldn't you want to know that an affiliate
13 of ComEd plans to be a bidder in the auction process?

14 A. Can you repeat the question?

15 Q. Yeah. Wouldn't you want to know whether
16 Exelon Generation which is an affiliate company of
17 ComEd plans to be a bidder in the auction process?

18 A. I would expect to know that at the same
19 time as I know whether any other generating company,
20 financial company or energy marketer decides whether
21 to bid in the auction at the application stage.

22 Q. In the pre-approval stage where the bidders

1 are being qualified, it wouldn't surprise you to see
2 Exelon Generation as a bidder, would it?

3 A. I think it's possible.

4 Q. Well, when you say possible are we talking
5 about maybe 20 percent possible, 50 percent possible
6 or more in the certainty range, like 90 percent
7 possible?

8 A. I have no way of knowing.

9 Q. On terms of other bidders, is it your
10 understanding that Exelon Generation may be supplying
11 them electricity as well?

12 A. Can you rephrase the question?

13 Q. In terms of other bidders that are going to
14 bid in the auction process, is it your understanding
15 that Exelon Generation may be selling them
16 electricity as well?

17 A. At the current time? Is that what you are
18 talking about?

19 Q. No. Let me make it clear. Let's assume
20 that the auction process is approved, we have
21 bidders, we're going to be supplying electricity in
22 that auction. Is it your understanding that Exelon

1 Generation may be supplying other bidders as well?

2 A. As well as being a bidder themselves, is
3 that what you're saying?

4 Q. Yes.

5 A. They could. They could certainly do that.
6 They would have to be under or they would have to
7 comply with the association and confidential
8 information rules that impose certainly limits on the
9 kinds of transactions that is bidders in the auction
10 can make with each other.

11 Q. Well, would you expect they would at least
12 be helping those bidders supply the base power that
13 they may be bidding on in the auction? You don't
14 know either way?

15 A. I don't know. There is a market, as I
16 understand it, for those products and I don't know
17 whether they would be necessarily supplying other
18 bidders in the auction for those products or other
19 products.

20 Q. Let me ask it this way. Would you expect
21 the company that produces nuclear energy -- excuse
22 me. Would you expect a company that produces

1 electricity from nuclear energy to possibly supply
2 base power to other bidders in the auction?

3 A. I would expect them to be active in this
4 base load market and that may mean that they transact
5 with other bidders in the auction.

6 Q. And do you know how their margins, that is
7 Exelon Generation's margins, compare with margins of
8 producers of electricity through natural gas or
9 fossil fuel?

10 A. I don't understand the question, I'm sorry.

11 Q. All right. Now, from reading your
12 materials you have said that it's important for the
13 Auction Manager to be independent, isn't that
14 correct?

15 A. Yes.

16 Q. But you're going to be -- if you're hired
17 you're going to be hired by ComEd, are you not?

18 A. Hired by ComEd, yes.

19 Q. And you're going to be paid by ComEd?

20 A. Yes, and eventually by the fees that cover
21 the administration of the auction.

22 Q. Now, as part of the Auction Manager you're

1 going to be initially involved in setting prices, a
2 maximum price and a minimum price?

3 A. Yes.

4 Q. And are you doing that with ComEd
5 employees?

6 A. I believe the auction rules specify -- or
7 the proposal is for the minimum/maximum starting
8 price to be set with certain personnel from the
9 Company, the Auction Manager, and consultation with
10 Staff.

11 Q. But when you said the company we're talking
12 about ComEd, right?

13 A. Yes.

14 Q. So when I asked you whether you're going to
15 be setting maximum and minimum prices yourself,
16 you're also going to be doing it with the assistance
17 of ComEd employees?

18 A. Yes.

19 Q. Do you know who those ComEd employees are
20 going to be?

21 A. No.

22 Q. Has anyone told you?

1 A. No.

2 Q. Do you have any expectations as to who
3 those ComEd employees are going to be?

4 A. What I would expect is that those ComEd
5 employees would be those that have knowledge of
6 required data to form those minimum and maximum
7 starting price, and that given that the methodology
8 for setting the minimum and maximum starting price is
9 to be kept confidential from bidders under the
10 proposal, that there would be procedures in place to
11 make sure that happens.

12 Q. Have you come to ComEd and suggested to
13 them what ComEd employees you think ought to work
14 with you terms of setting maximum and minimum prices?

15 A. I don't think that we're at the stage where
16 that would happen. I haven't been acquainted as an
17 auction manager. The orientation hasn't started, so
18 no, we have not.

19 Q. Have you formed any initial opinions --
20 let's assume that the auction process is approved and
21 you are appointed the auction manager. At this point
22 now have you drawn any preliminary conclusions or

1 opinions about who you want to work with at ComEd?

2 A. I have not.

3 Q. During the auction process you're also

4 going to be deciding to drop the prices, right?

5 A. That's correct.

6 Q. And, again, who's going to be helping you

7 do that other than your team and yourself?

8 A. The formula that's in the auction rules.

9 Q. And when you do the dropping of the price,

10 is it just a ritualistic formula that you are using

11 or are you exercising some discretion as well?

12 A. It's a formula.

13 Q. And does -- ComEd is going to be working

14 with you during the auction process, is it not, when

15 the auction is actually taking place?

16 A. No.

17 Q. They're not?

18 A. No.

19 Q. All right. Then I misunderstood. Who's

20 going to be working with you?

21 A. During the auction?

22 Q. Yeah.

1 A. The team that would be the auction manager,
2 Staff and any advisor that they wish to have at the
3 time.

4 Q. In your initial proposal was ComEd going to
5 work with you as well?

6 A. No. I believe that's clarified in one of
7 the exhibits to my Rebuttal Testimony.

8 Can I point you to that?

9 Q. Sure.

10 A. Some of that information is in Exhibit
11 11.6. I'm talking about ComEd Exhibit 11.6. That
12 basically sets out the decision and action and who is
13 involved in each of these actions and it points out
14 that there is, as you said, the setting of starting
15 prices, some credit work on qualifications. But
16 otherwise ComEd is not involved in the process.

17 Q. What's the purpose of the maximum price and
18 the minimum price?

19 A. Basically, it gives information to bidders
20 as to a range of where the auction should start and
21 it should be set sufficiently high to maximize
22 participation and attract bidders to the process.

1 Q. And what's the purpose of the minimum
2 price?

3 A. The minimum and maximum starting price are
4 just a range of where the auction could start. So
5 the minimum is not binding on the auction. To give
6 an example, it could be that we would say we're going
7 to start the auction between \$50 a megawatt hour and
8 \$75 a megawatt hour and the auction would start out
9 at 60, and then it ticks down and can go down to 40
10 or whatever the number is.

11 Q. When you set the market maximum prices,
12 what are you looking at? What factors are you taking
13 into consideration?

14 A. At this point, as I indicated in the
15 Rebuttal Testimony, I believe -- can I --

16 Q. Yes. You may look.

17 (Witness is looking through exhibits.)

18 A. So the description of the setting of the
19 minimum and maximum starting price is on page 50 of
20 the ComEd Rebuttal Testimony. And what I discuss
21 there is that the methodology is not completely set
22 but certainly that the minimum and maximum starting

1 prices would be developed considering recent market
2 data.

3 Q. And when you said recent market data, what
4 did you mean by that?

5 A. It would include energy forward prices for
6 standard products, for example, capacity market data
7 and other market data that could go into the setting
8 the minimum and maximum starting prices.

9 Q. You said energy forward prices and capacity
10 prices and other market data. What did you mean by
11 other market data?

12 A. This is not a complete list because the
13 methodology hasn't been set. On lines 1924 and 1926
14 I also include congestion and full transmission
15 rates.

16 Q. And how about PJM prices? Do they have any
17 relevancy to the setting of maximum or minimum prices
18 here?

19 A. What would have the most relevance would be
20 forward prices.

21 Q. And when forward prices are computed, are
22 they ever done on the basis of PJM present day or day

1 ahead prices?

2 A. No.

3 Q. Okay, what are they based on?

4 A. They're based on the amount at which

5 forward market products are being traded.

6 Q. And what's your understanding of how

7 forward market prices are determined? Do you have an

8 understanding?

9 A. Not enough to explain it to you, no.

10 Q. So you don't know whether or not computing

11 forward prices, current prices, current market

12 wholesale prices are taken into consideration; you

13 don't know that either way?

14 A. Can you rephrase your question?

15 Q. What is it that you don't understand about

16 my question?

17 A. I don't understand who is supposed to be

18 setting those prices.

19 Q. Well, who sets forward prices now?

20 A. Those prices are set by trades and they're

21 set by markets.

22 Q. They're set by the market, right?

1 A. Right.

2 Q. And does forward prices have any
3 relationship at all to present market day wholesale
4 prices for electricity?

5 A. They will be related to the expectation of
6 spot prices in the future.

7 Q. So if I understand you correctly -- if I'm
8 wrong, I'm sure you will tell me -- but when you say
9 spot prices and maybe in the future we're talking
10 about taking a look at spot prices, that could
11 include PJM present and day ahead prices, right?

12 A. Making expectations of those prices in the
13 future, that is correct.

14 Q. And whether those prices will go up or
15 whether those prices will go down?

16 A. Right.

17 Q. What's happening to those prices? Have you
18 even checked?

19 A. No, I have not.

20 Q. Do you have any opinion of whether those
21 prices have gone up in the past year or two?

22 A. They've gone up.

1 Q. Okay, all right. Now, as the Auction
2 Manager, let's say that the bidding takes place,
3 right? How are you going to educate yourself about
4 the prices and whether or not the maximum and minimum
5 prices that are set and the way that the prices are
6 ticking up or down are what you might think
7 reflective of market prices because isn't that what
8 we're trying to achieve here ultimately?

9 A. Can you break that question down?

10 Q. Yeah, I will. What's the ultimate goal of
11 the auction? The prices are what? They reflect
12 what?

13 A. Expecting to get reliable supply,
14 competitive market prices.

15 Q. All right. So let's take your definition
16 of competitive market prices, and we're talking about
17 competitive wholesale market prices?

18 A. We're talking about the competitive market
19 price for the auction product, for the auction
20 products that are included in the auction.

21 Q. And how are you going to determine while
22 the auction is taking place whether that result is

1 being achieved? What are you going do? How are you
2 going to educate yourself to that?

3 A. Well, it's going to be determined by the
4 behavior and the bidding patterns that are seen
5 throughout the auction rounds.

6 Q. Like what?

7 A. Well, it will depend on the volume that's
8 being bid in the auction and the competition that can
9 be seen from round to round and the way in which, for
10 example, bidders are switching from one product to
11 another that will reflect their perceived difference
12 in evaluation across the products and the patterns of
13 when bidders exit the auction and when they continue
14 to bid in and when the auction closes.

15 Q. Now, when the auction begins, the actual
16 physical auction begins, how are you going to educate
17 yourself to all those different factors you've just
18 described?

19 A. What I've described is really what is being
20 observed in the auction room round by round. So what
21 I'm saying that will be observed is really how
22 bidders are actually going to bid round by round and

1 how they react to the different prices as they tick
2 down throughout the auction.

3 Q. So let's assume the auction takes place and
4 you believe that the auction went in accordance to
5 all the rules you set out, right?

6 A. (Nodded head.)

7 Q. What do you do then? Do you provide some
8 certification to the ICC that I though the auction
9 went well?

10 A. There's a report that's being proposed
11 that's included in Mr. McNeil's testimony exhibit, I
12 think, it's 10.1 and 10.2. It has a series of
13 questions that go to evaluating the outcome, some of
14 which can be done ahead of time. So it has a
15 section that talks about the pre-auction, the actions
16 and that describes how the qualifications went and
17 whether information was provided to bidders on a
18 timely basis and whether all the procedures were
19 tested, etcetera. It has a second section that goes
20 to evaluating the results of the auction itself in
21 which it's taking into account the competitiveness of
22 the auction, whether there were any problems with the

1 procedure and whether there were any complaints from
2 bidders, etcetera. There's a series of questions
3 that make that evaluation. There's a third section
4 that talks about the evaluation of whether there was
5 any external event that could have impacted the
6 bidding and would have been transitory and just have
7 impacted the bidding given the timing of the auction.
8 So it's this full evaluation that would be conducted
9 for both the auction and the process that preceded
10 it.

11 Q. Now, you said the goal of the auction is
12 competitive market prices, right?

13 A. That's one of the objectives, yes.

14 Q. How are you going to know during the
15 auction process actually what the results are are
16 competitive market prices?

17 A. Well, as I said, it's the confluence of
18 these factors in the sense the if the bidding in the
19 auction has been competitive, if the bidding patterns
20 are what we would expect from a competitive auction,
21 if there were no difficulties with the bidding
22 procedure, if there is no external events that we

1 believe has impacted the bidding and would have been
2 transitory, given all these factors, if all these
3 factors are in the affirmative, then I would believe
4 that the resulting prices are competitive market
5 prices.

6 Q. When you talk about external results that
7 might impact the bidding process while it is
8 occurring, what are you talking about? What are you
9 worried about?

10 A. Well, there could be anything from war
11 being declared to problems in the market that are
12 transitory where that could impact how bidders --
13 bidders' perception and the bidding, and that could
14 be transitory.

15 Q. When you -- I didn't mean to interrupt you.
16 But when you talk about things that occur in the
17 market that are transitory, what are you talking
18 about?

19 A. I don't have a specific instance in mind.
20 If you want to give me an exhibit, I can see whether
21 in that exhibit there is a particular example that I
22 could give you about it.

1 Q. Well, what has your experience been? I
2 mean, you have done this for awhile. What are things
3 just from your general knowledge to worry about in
4 terms of transitory things impacting the bidding
5 process while the bidding process is taking place?

6 A. I've been fortunate enough that there has
7 been no such events.

8 Q. But you have never done one in Illinois,
9 though, have you?

10 A. No. I am now understanding that very
11 clearly.

12 JUDGE WALLACE: And New Jersey is better?

13 Q. All right. So you've got all of these
14 things going on and you're trying to make the
15 determination of whether their competitive market
16 price are actually resulting here. And if you don't
17 think there are, if that's not happening, do you stop
18 the auction process?

19 A. You mean if at the end of the auction I
20 believe that --

21 Q. (Nodded head).

22 A. Then I would state that and presumably be

1 able to point to one of these reasons that we've
2 discussed in the report to the Commission and --

3 JUDGE WALLACE: Mr. Rosen, you're actually
4 going way over.

5 MR. ROSEN: I'm trying to get close. I don't
6 have that much more. I'll hurry.

7 Q. If you think a competitive market resulted,
8 you're going to put that in the report, essentially?

9 A. Can you repeat that?

10 Q. Yeah. If you think that the auction has
11 led to competitive market results, you're essentially
12 going to tell the ICC that, right?

13 A. Yes.

14 Q. And you have, what, one day to prepare your
15 report and get it to the ICC?

16 A. Given that the first section is all on
17 pre-auction action, one of the proposals is that they
18 could see the interim report, that could be done
19 ahead. But on doing the results of the auction,
20 typically it would done as the auction unfolds and
21 there's an additional day to complete that report.

22 Q. So you've got one business day to get that

1 report to the ICC?

2 A. One additional day.

3 Q. And how long does the ICC have to look at
4 that report and make a determination of whether they
5 want to stop further action taken on the auction
6 results?

7 A. They have three business days.

8 Q. And what are they going to look at?
9 They're going to look at your report, right?

10 A. Well, I believe that they will be able to
11 look at the Auction Manager report. They will be
12 able to look at the Staff report and they will also
13 have in their possession all the information that's
14 been given to them throughout the process.

15 Q. I'm talking about the process -- now, for
16 all practical purposes is it fair to say that the ICC
17 within three business days is going to make a
18 determination based on your report?

19 A. No, I don't believe that's fair.

20 Q. Now, is it your understanding that
21 afterwards there's going to be a review process that
22 the ICC will undertake of the auction?

1 A. Afterwards.

2 Q. I saw something about within a certain
3 period of time they will take a formal review and
4 after the third year there's a more formal
5 proceeding, right?

6 A. Right.

7 Q. By the way in the ICC's review do you
8 remember the striking edits? Would that be prompt
9 post-auction review? Do you remember using those
10 words?

11 A. No, I don't.

12 Q. Take a look at page 51, line 1210 of your
13 testimony.

14 A. Which one?

15 Q. I'll tell you in a second. You know what,
16 I'll come over there. I'll unplug myself.

17 MR. TROMBLEY: Your Honor, can you tell us what
18 case that's in?

19 MR. ROSEN: Yeah, it's in the ComEd case. See
20 where it says the ICC Staff will, and then on line
21 1210, page 51, conduct a prompt post-auction review.
22 Do you see that?

1 THE WITNESS: Yes, I do.

2 Q. You describe that in your words as a prompt

3 post-auction review, right?

4 MR. TROMBLEY: Which case is that?

5 MR. ROSEN: ComEd. All right. One last thing

6 here and I'm almost done, your Honor, I really am.

7 Q. Have you reviewed the testimony of other

8 people?

9 A. I reviewed some of the testimony, yes.

10 Q. Have you reviewed the testimony of

11 Mr. McNeil?

12 A. Yes.

13 Q. By the way, while I'm doing this, does it

14 bother you that some of the ComEd employees that you

15 talk to have stock options that are tied into Exelon

16 Corporation? Do you know that?

17 A. I was in the hearing room, yes.

18 Q. Does that bother you that people from ComEd

19 have an indirect stake on how well Exelon Generation

20 does?

21 A. No.

22 Q. It doesn't you, huh? And why is that? It

1 doesn't bother you that the buyer also has a stake in
2 the seller?

3 MR. RIPPPIE: It is at a minimum a compound
4 question. It is two different questions. And the
5 second one is contrary to the evidence.

6 JUDGE WALLACE: Well, break it up.

7 MR. ROSEN: It's not that important.

8 Q. Okay. What's your understanding of what's
9 going to take place in this three-year review?

10 A. I don't know.

11 Q. All right. Well, I'll show it to you.
12 Okay. This is testimony of McNeil, his rebuttal,
13 page or line 741.

14 MR. RIPPPIE: Rebuttal?

15 MR. ROSEN: Yeah.

16 Q. And if you go up a little farther they're
17 talking about this three-year ICC review process
18 that's going to take place. Do you want to look at
19 that to make sure I'm right?

20 Okay. Starting on line 716 it says
21 "The four layers of protection for consumers would
22 come from the periodic normal ICC assessments which

1 we propose would be held roughly every three years."

2 Do you see that?

3 A. I do.

4 Q. Was that the first time you knew that was

5 going to happen?

6 A. I was generally aware that there was a

7 three-year review.

8 Q. Do you agree or disagree with that? Do you

9 think that's a good thing?

10 A. What specifically, that there be a review?

11 Q. Sure. You're not against it, are you?

12 A. No.

13 Q. Okay. And starting on page 741 I want to

14 know whether you agree with this. It says, and this

15 is Mr. McNeil testifying, "The Commission would

16 review the available information and determine

17 whether any action would be required to revise the

18 procurement methodology to be implemented in the next

19 procurement cycle." Do you think that's a good thing

20 or a bad thing?

21 A. That's a fine thing.

22 Q. Okay. And it says, "This layer protects

1 consumers by providing for an opportunity to review
2 actual results over time to detect whether there are
3 patterns or potential systematic flaws in the process
4 that would prevent consumers from being able to
5 receive good market prices." Do you see that?

6 A. Yes.

7 Q. Do you think that's a good or a bad thing?

8 A. I think that goes with reviewing the
9 process.

10 Q. But then it says, "The purpose of the
11 three-year window is to permit sufficient data to
12 make a determination of whether a pattern existed
13 which may not be apparent from examination of a
14 single auction result." Do you see that?

15 A. Yes.

16 Q. Do you agree or disagree with that
17 statement?

18 A. I can't agree or disagree.

19 Q. Why not?

20 A. It is what it is. That's what it says.

21 Q. Well, but McNeil is making a statement that
22 the purpose of the review is to permit sufficient

1 data -- let's break it down. Actually this is what
2 he is saying. He says we're going to take three-year
3 data, right?

4 A. Right.

5 Q. And the three-year data I'm assuming are
6 the auction results, right?

7 A. Right.

8 Q. And then he saying to make a determination
9 of whether a pattern existed, right? Did you
10 understand that part?

11 A. Right.

12 Q. And then he says which may not be apparent
13 from an examination of a single auction result. Do
14 you agree or disagree with that statement?

15 A. Three years of data is better than one, I
16 understand is what he saying.

17 Q. All right. So he's suggesting to you that
18 you may have to look at auction results over a period
19 of time to really determine whether or not the prices
20 that you're getting are reflected in the market,
21 right?

22 A. I don't think that's exactly what he says

1 in the portion you quoted.

2 Q. Well, it says what it says, right? You
3 would agree with that?

4 A. I will certainly agree with that.

5 Q. Now, then, the last thing, the terms of
6 residential customers in the auction that is being
7 proposed here is one-year, two-year and five-year
8 contracts, right?

9 A. That's correct.

10 Q. And New Jersey doesn't have three or
11 five-year contracts, do they?

12 A. Can you repeat the question?

13 Q. Yeah. In terms of the New Jersey auction
14 process they're not auctioning off tranches in about
15 three-year or five-year contracts, are they?

16 A. It's all three years for the fixed price
17 auction.

18 Q. But not for the five-year?

19 A. There's no five-year, that's correct.

20 Q. Now, would you agree that a three-year
21 window in your opinion, based on your being an
22 Auction Manager, would give you more data to

1 determine whether or not the auction results do
2 reflect what your goal is, which is to obtain
3 competitive market prices?

4 A. I agree that more data is better than maybe
5 the possibility of a pattern. One data point a
6 pattern does not make.

7 MR. ROSEN: All right, I have nothing further.

8 JUDGE WALLACE: Thank you. Ms. Spicuzza.

9 CROSS EXAMINATION

10 BY MS. SPICUZZA:

11 Q. Good afternoon, Dr. LaCasse.

12 A. Good afternoon.

13 Q. My name is Marie Spicuzza and I am with the
14 Cook County State's Attorney's office. My citations
15 to the record will be in the ComEd case, to your
16 testimony in the ComEd case.

17 You have been employed at NERA since
18 2001; is that correct?

19 A. That's correct.

20 Q. Since 2001, how many times have you been
21 employed by a utility or a company working in the
22 electricity industry to consult in some fashion?

1 A. At least four.

2 Q. Have any of those consulting jobs resulted
3 in your testifying in any form?

4 A. Yes.

5 Q. How many times have you testified?

6 A. Five excluding today.

7 Q. And have you ever testified on behalf of a
8 consumer organization?

9 A. No.

10 Q. Do you agree that independence is required
11 for the role of the Auction Manager?

12 A. Yes.

13 Q. Who would be more independent, an Auction
14 Manager hired by the Commission or one hired by the
15 utility?

16 A. I don't think that's the relevant
17 consideration.

18 Q. Would the public perceive an Auction
19 Manager selected by the Commission as more
20 independent?

21 A. In my experience, no.

22 Q. You mentioned when counsel for CUB was

1 questioning you that there is a contract between
2 ComEd and NERA as well as Ameren dating from
3 September or October of 2004. Does that contract
4 make you or NERA the Auction Manager if the ICC
5 approves this Docket?

6 A. No.

7 Q. Upon page 9 of your testimony you testify
8 that, second, NERA will put in place formal
9 procedures separating any consulting work performed
10 for ComEd or Exelon by other NERA professionals and
11 my responsibilities as Auction Manager in preventing
12 the sharing of any non-public data between personnel
13 performing the two functions; is that correct?

14 A. That's correct.

15 Q. What type of work does NERA do or has NERA
16 done for ComEd?

17 A. These -- the separation of the team that
18 you just referred to is in place right now, so I
19 cannot speak to what other NERA teams are doing for
20 ComEd/Exelon at the present time.

21 Q. But your role is shepherding this
22 proceeding through the Commission; is that correct?

1 A. My role is giving advice on the auction
2 process and providing testimony for ComEd and Ameren.

3 Q. And what role does NERA have for Exelon?

4 A. NERA has provided advice with respect to
5 their merger.

6 Q. And has NERA provided any other advice to
7 Exelon?

8 A. I don't know.

9 Q. Has NERA provided advice to any of the
10 affiliates of Exelon?

11 A. I believe so but I don't recall a specific
12 instance.

13 Q. Has NERA provided consulting work for
14 companies in the electric industry?

15 A. Yes.

16 Q. And can you quantify this work in terms of
17 you could say dollars or time or percentage of NERA's
18 business?

19 A. Is what, for the energy practice versus the
20 other practices?

21 Q. Yes.

22 A. No, I don't have those figures, I'm sorry.

1 Q. If a firm receives significant compensation
2 from consulting activities should it be barred from
3 doing any auditing or similar role that requires
4 independence in the public trust?

5 A. Can you repeat the question?

6 Q. If a firm receives significant compensation
7 from consulting activities, should it be barred from
8 doing any audit or similar role that requires
9 independence in the public trust?

10 A. I can't answer that.

11 Q. Can you answer who is looking out for the
12 ratepayers in the auction?

13 A. Staff and the auction manager and ComEd and
14 Ameren.

15 Q. On page 94 of your rebuttal testimony at
16 lines 2252 to 2255 you note, "Certainly Dr. Salant
17 and I share the view that the auction is being
18 conducted on behalf of the Illinois ratepayers and
19 that this is best accomplished if the process is
20 conducted by an independent auction manager with
21 substantial involvement and oversight from ICC Staff
22 with assistance from their auction advisor." You

1 would agree that this is not the only way to
2 accomplish an independent auction?

3 A. Can you rephrase the question?

4 Q. Would you agree that this is not the only
5 way to accomplish an independent auction?

6 A. What do you mean by independent auction?

7 Q. If you look at your testimony on page 94 of
8 your rebuttal -- do you want to go there or would you
9 like me to repeat it?

10 A. I'm reading the passage right now.

11 Q. Would you agree that --

12 A. I read it.

13 Q. Would you agree that one could run a
14 successful auction if Illinois decided to require an
15 independent state market monitor?

16 A. It would not prevent a successful auction.

17 Q. Are you familiar with the expression tacit
18 collusion?

19 A. Yes.

20 Q. And that is sellers are able to formate
21 their prices without detectable acts of
22 communication?

1 A. Yes.

2 Q. As Auction Manager, how would you detect
3 this?

4 A. The source to detect that would be the
5 round by round biddings that are available to the
6 Auction Manager and to Staff. That can show signs of
7 coordination among the bidders.

8 Q. What type of signs would you see?

9 A. For example, there could be coordinated
10 withdrawals in certain rounds and those patterns
11 could be seen throughout the bidding rounds of the
12 auction.

13 Q. Is there anything else?

14 A. There may be at this point. I'm not
15 thinking of another example for you.

16 Q. Would you agree that this type of activity
17 is something that an Attorney General assisting as an
18 independent market monitor would be helpful to have
19 involved in the process?

20 A. No.

21 Q. Why not?

22 A. Because I think it takes experience in

1 seeing the bidding patterns round by round and
2 understanding what the bidders strategies would be.
3 And I would not expect a person that doesn't have
4 experience in those areas or has not studied the
5 auction process to be helpful in evaluating whether
6 there is tacit collusion or not.

7 Q. What about someone with that type of
8 experience being appointed as an independent market
9 monitor? Would that be helpful? And he has that
10 knowledge.

11 A. Yes.

12 Q. Are you familiar with the Serving Actly
13 (spelling) Act?

14 A. No.

15 Q. Would you agree that in planning an
16 auction, ethics and independence should be a concern
17 to everyone involved in the process?

18 A. Yes.

19 Q. Are you familiar with some of the issues in
20 the financial communities with firms that have both
21 audit and consulting roles for the same company or
22 industry?

1 A. No.

2 Q. Do you agree that your independence is one
3 of the keys to a fair auction?

4 A. Yes.

5 Q. Do you agree it is important to avoid even
6 the appearance of impropriety?

7 A. I don't know how to answer that, I'm sorry.

8 Q. Why don't you know how to answer that?

9 A. I don't know what you're relating that to
10 in the previous line of questioning.

11 JUDGE WALLACE: Dr. LaCasse, questions are
12 questions. So give it your best shot, please.

13 WITNESS LACASSE: Yes, Your Honor.

14 MS. SPICUZZA: Do you want me to ask the
15 question again?

16 JUDGE WALLACE: Might as well.

17 BY MS. SPICUZZA:

18 Q. Do you agree that your independence is one
19 of the keys to a fair auction?

20 A. Yes.

21 Q. And do you agree that it is important to
22 avoid even the appearance of impropriety?

1 A. Yes.

2 Q. Now, on page 3 of your Direct Testimony you
3 talk about some of your experience with game theory
4 and auctions. Could you for the record provide a
5 simple definition of game theory, please?

6 A. It's a technique of analysis for strategic
7 behavior.

8 Q. On page 6 of your Direct Testimony, this is
9 a bunch on the Ohio auction, you mention that in 2004
10 you were retained to serve as the auction manager for
11 FERC energy companies' competitive bidding process,
12 CBP in Ohio, correct?

13 A. Yes.

14 Q. Did Ohio conduct a New Jersey style auction
15 similar to the one that you are recommending here in
16 Illinois?

17 A. No.

18 Q. Did consumers ever pay the rates that
19 resulted from the auction you ran?

20 A. No.

21 Q. Was this because the regulated rate in Ohio
22 was lower than the rate that resulted from the

1 auction?

2 A. Their rate stabilization plan was lower,
3 yes.

4 Q. And the rate stabilization plan was the
5 regulated rate?

6 A. I don't know for a fact that that is a
7 correct characterization of the rate stabilization
8 plan.

9 Q. Was the rate stabilization plan what
10 ratepayers paid in Ohio?

11 A. Yes.

12 Q. After the auction?

13 A. Yes.

14 Q. Do you consider Ohio's regulated rates on
15 the high side?

16 A. I don't know.

17 Q. On page 5 of your Rebuttal Testimony on
18 lines 15 and 16 you conclude that the proposed
19 auction process remains the best method of procuring
20 supply for ComEd's customers in the Post-2006 period;
21 is that correct?

22 A. On page 5?

1 Q. Of your rebuttal at lines 15 and 16.

2 MR. RIPPIE: Marie, page 5 doesn't have a 15
3 and 16.

4 Q. Well, you do conclude in your testimony
5 that the auction process is the best method of
6 procuring supply for ComEd's customers in the
7 Post-2006 period?

8 A. Can I have the cite to the testimony,
9 please?

10 Q. Apparently my cite is not correct.

11 MR. RIPPIE: Actually it turns out it's line 16
12 and 17 on page 1.

13 THE WITNESS: Yes.

14 Q. When you say best method, doesn't that mean
15 the lowest price method for customers?

16 A. One of the objectives is reliable supply at
17 competitive market prices, yes.

18 Q. Is New Jersey still the only place in the
19 United States where an open auction has been actually
20 used in the energy sector?

21 A. I'm sorry. Can you repeat that?

22 Q. Is New Jersey the only place in the United

1 States where an open auction has been actually used
2 in the energy sector?

3 A. Ohio is another one.

4 Q. But they didn't use the rates for the
5 auction in Ohio; is that correct?

6 A. That's correct.

7 Q. Now, on page 20, starting at line 421 of
8 your Direct Testimony you relate what you believe to
9 be the goals of the New Jersey auction?

10 A. That's correct.

11 Q. Are any of the goals that the auction
12 obtains the lowest price for customers?

13 A. It says prices that are consistent with
14 market conditions and that's what it says about
15 prices.

16 Q. Which isn't the lowest price for consumers,
17 correct?

18 A. Correct.

19 Q. Do residential consumers in New Jersey have
20 alternative choices to purchase their power?

21 A. I don't know.

22 Q. On page 55 of your Direct Testimony at

1 lines 1298 to 1310 you state what you believe to be
2 the objectives of the Illinois auction proposal?

3 A. Yes.

4 Q. Are any of those objectives that the
5 auction obtain the lowest price for customers?

6 A. Again, it's reliable supply at competitive
7 market prices.

8 Q. But not the lowest price for consumers?

9 A. Correct.

10 Q. Are any of the objectives that the price be
11 a lower price for customers?

12 A. Lower than what?

13 Q. Lower than they're currently paying?

14 A. No.

15 Q. Are any of the objectives that rates be
16 reasonable?

17 A. Not in the objectives that are stated here.

18 Q. Do residential consumers in Illinois have
19 any actual alternative choices to purchase their
20 power?

21 A. I don't know that.

22 Q. On page 21, at lines 464 through 465 of

1 your direct and talking about pricing, you note that
2 this means pricing BGS at market rates in order to
3 encourage the development of efficient retail
4 competition. Do you see that?

5 A. Yes.

6 Q. By this you mean have prices with more head
7 room so that others are encouraged to compete?

8 A. No.

9 Q. On page 13 of your Rebuttal Testimony
10 starting at line 310, you contend that having
11 considered the testimony of Mr. Salgo and Dr.
12 Steinhurst, you are not persuaded that having the
13 utility manage the supply portfolio would result in a
14 better outcome for customers; is that correct?

15 A. That's correct.

16 Q. What quantitative analysis did you do or
17 did you review to reach this conclusion?

18 A. I did not perform a quantitative analysis
19 or review one.

20 Q. What do you expect rates to be in January
21 of 2007 using ComEd's auction?

22 A. I can't answer that.

1 Q. What would you expect rates to be utilizing
2 the approach recommended by Dr. Steinhurst?

3 A. I can't answer that either.

4 Q. Is it possible that Dr. Steinhurst's
5 approach would be better for customers?

6 A. I don't believe that that's the case, no.

7 Q. I have a few questions on Dr. Laffer's
8 modification, the pay-as-bid proposal, and I want to
9 examine why you think that an auction participant
10 will not be paid more in a uniform price auction as
11 opposed to a pay-as-bid approach as suggested by
12 Dr. Laffer, and I refer you to page 67 of your
13 rebuttal at line 1584 through 1586. You state, "If
14 the two bids are the same, then, of course, the
15 supplier is paid more in a uniform price auction.
16 But if the two bids are different, the bidder could
17 equally well be paid less in a uniform price
18 auction." What empirical evidence do you have that
19 this is true?

20 A. This is an explanation. I don't have
21 empirical evidence for this.

22 Q. If Dr. Laffer's modifications were made and

1 the auction was run as pay-as-bid, let's assume that
2 he was wrong and prices went up as a result of his
3 modifications. How does this affect ComEd or others
4 that are supplying power in the auction negatively?

5 A. Can you repeat that slowly?

6 Q. Yes. If Dr. Laffer's modifications were
7 made and the auction was run as pay-as-bid and let's
8 assume that he was wrong and the prices went up as a
9 result of his modifications, how does this affect
10 ComEd or any others who are supplying power in the
11 auction negatively?

12 A. Prices were higher than they would have
13 been under a uniform auction, is that what you mean?

14 Q. Correct.

15 A. It does not affect negatively the suppliers
16 who would win at the auction.

17 Q. They would make more money?

18 A. Yes.

19 Q. And further if Dr. Laffer's approach is
20 right, would you agree that it would result in
21 customers getting cheaper power from the auction?

22 A. Yes.

1 Q. So there's no down side to testing his
2 theory?

3 A. I believe you just said the prices could be
4 higher, and I do testify that I believe that his
5 modification would not be beneficial to the auction
6 process. So there is a harm to testing the theory.

7 Q. If he's wrong?

8 A. And I believe he is.

9 Q. Now I'd like to ask you a few questions on
10 competition. Would you agree that as the United
11 States struggles with competition in the electric
12 market, that the fact that different states operate
13 under different retail rules could create problems?

14 A. I don't know how to answer that.

15 Q. Are you familiar with a book called Making
16 Competition Work In Electricity by Sally Hunt who is
17 the head --

18 A. I know her.

19 Q. And she is who?

20 A. She was an employee of NERA.

21 Q. What was her position at NERA?

22 A. She was Senior Vice President, at some

1 point was head of the energy department.

2 Q. And you are familiar with her work?

3 A. I read the book.

4 Q. And on page 337 of her book she talks about
5 jurisdiction. And in that -- on that page she
6 indicates that,

7 "The regulation and, hence, the
8 deregulation of generation is where the big
9 regulatory problem lies. Jurisdiction is divided in
10 a complicated way. Only the states can deregulate
11 the generation. But once they do, it passes into
12 Federal jurisdiction and obviously state regulators
13 are not happy about losing their powers.

14 "But natural markets are larger than a
15 single state and, hence, no state can insure
16 competition throughout the market, although it can
17 deregulate within the state. The state cannot set up
18 trading arrangements. They cannot expand
19 transmission capacities throughout the market. They
20 probably cannot even require the companies they
21 regulate to divest capacity to insure competition.
22 They certainly cannot require generators in other

1 states to do so and FERC cannot either. So no one
2 has the authority to bring about production
3 competition in the remaining states."

4 Do you agree with that passage?

5 MR. RIPPIE: There's about ten statements in
6 there, including three or four legal conclusions. I
7 think at a minimum if we really want to do this we
8 ought to break them up and go at them one at a time.

9 JUDGE WALLACE: I really don't think that's
10 necessary. Do you? The question was do you agree
11 with that passage. So go ahead and answer the
12 question, please.

13 A. Yes.

14 BY MS. SPICUZZA:

15 Q. Given those concerns how can we expect
16 Illinois customers to benefit by the auction
17 competition since others in the US are not
18 necessarily playing by the same rules?

19 A. I'm sorry. I don't see how that follows
20 from what you read.

21 JUDGE WALLACE: It doesn't matter. The
22 question, please.

1 WITNESS LACASSE: All right. Can you repeat
2 the question?

3 BY MS. SPICUZZA:

4 Q. Given the concerns expressed in Sally
5 Hunt's book, how can we expect Illinois consumers to
6 benefit by the auction competition since others in
7 the United States are not necessarily playing by the
8 same rules?

9 A. I would think that bidders and suppliers --
10 there are suppliers in PJM and MISO and possibly
11 others that would want to come and compete to be able
12 to serve the ComEd load.

13 Q. But you would agree that it's unclear what
14 direction other states and markets may go?

15 A. Yes.

16 Q. Can a generator find a way to use this to
17 their advantage?

18 A. I don't see how.

19 Q. Would you agree that market power is an
20 important issue to monitor when considering whether
21 to conduct an auction?

22 A. Yes.

1 Q. And would you also agree that market power
2 is an important issue to continue to monitor in
3 Illinois if the auction is approved?

4 A. I believe that there is monitoring at the
5 PJM and the MISO level. I cannot answer the market
6 power in Illinois part of the question.

7 Q. Now, as the load cap gets lower, does this
8 open the possibility that more generation from Exelon
9 Generation will be used by other participants in the
10 auction and that these other participants may
11 potentially bid in this Exelon power at higher than
12 Exelon Generation might have bid them at?

13 A. The bidders in the auction are assembling a
14 whole bunch of products to be able to fulfill the
15 full requirements of the auction product. I don't
16 know how to answer your question, I'm sorry.

17 Q. Could they buy power from Exelon
18 Generation?

19 A. Yes.

20 Q. Could they bid that into the auction?

21 A. They would have to assemble it with other
22 products, buy risk management services, capacity, all

1 the other products to be able to fulfill the full
2 requirement auction product in the auction. And
3 given their strategies and how they put together
4 their portfolio, they could be bidding into the
5 auction.

6 Q. At a higher price?

7 A. The products are not comparable.

8 Q. But the portion that they bought from
9 Exelon Generation that is in the product that they
10 create that they bid in the auction was purchased at
11 a certain price?

12 A. Yes.

13 JUDGE WALLACE: Are you getting close?

14 MS. SPICUZZA: Yes, Your Honor. Maybe just
15 four minutes?

16 JUDGE WALLACE: All right.

17 MS. SPICUZZA: Thank you.

18 Q. Would you agree that price controls such as
19 a price cap are sometimes an appropriate transitional
20 measure if the market is disfunctional and the
21 alternative is market failure?

22 A. No.

1 Q. Do you agree that the auction needs to
2 result in rates that are just and reasonable?

3 A. Yes.

4 Q. What types of information will be looked at
5 when you are judging the auction results?

6 A. When I'm looking at the auction results, is
7 that what you said?

8 Q. Yes.

9 A. What will be looked at is the entire record
10 of how the auction process has proceeded to that
11 point and all the rounds of bidding in the auction.
12 So it will include what happened in qualification,
13 the kind of information that was provided to bidders,
14 bidder questions that were asked. It will include
15 how the procedures for bidding were set up, all the
16 pre-auction actions, as well as the bidding in the
17 actual auction round by round and the observation
18 that can be made from that data.

19 Q. So you'll be looking at the prices that
20 were bid.

21 A. The bidders don't bid prices. They bid
22 quantities at prices that are suggested by the

1 auction manager.

2 Q. Will you be looking at the cost of
3 generation?

4 A. No.

5 Q. At what point does the auction result
6 become unreasonable? And I'm talking about a level,
7 not the process.

8 A. I don't think I can answer that.

9 Q. Can you answer what benchmark should be
10 used after the transition to judge whether the rates
11 are just and reasonable?

12 A. If the auction proposal is accepted, you
13 mean?

14 Q. Yes.

15 A. If the auction process is accepted, then
16 the benchmarks would be the kind of criteria that are
17 included in the Auction Manager and in the Staff
18 report and would include the fact that the process
19 was conducted as it would have been approved by the
20 Commission and the competitiveness of the auction
21 and, as I mentioned previously, that there's no
22 outside events that had impacted the bidding in a

1 temporary way. So those kinds of criteria that would
2 be used to look at how the process has been conducted
3 are the questions that are in the Auction Manager and
4 the Staff reports. And the Commission can make a
5 determination on that basis and take into account any
6 other factor that the Commission wants to take into
7 account.

8 Q. I have three brief questions left. You do
9 agree that if the auction is approved, it must comply
10 with Illinois law?

11 A. Yes.

12 Q. On page 54 of your rebuttal starting at
13 line 1286 you consider the suggestion that auction
14 information be made public and you recommend that
15 certain information not be made public. I would like
16 you to assume for the purposes of --

17 A. I'm sorry. Could you give me the cite
18 again? I am sorry, I am not seeing that.

19 Q. Page 54 of your rebuttal, starting at line
20 1286.

21 A. Yes, I see that.

22 Q. And I would like you to assume for the

1 purposes of providing your opinion here, could the
2 auction function properly if all documents and
3 records in the Commission's possession shall be
4 public records and are available at the conclusion of
5 the auction?

6 A. I don't believe so, no.

7 Q. On pages 54 and 55 you claim,

8 "If information about their auction
9 participation were public, it could impede their
10 other business dealings by revealing important
11 information regarding their competitive position and
12 it could directly impair their bargaining position
13 when making supply arrangements for the auction.

14 "The ultimate effect of the auction
15 outcome would be to raise prices, either because
16 making auction information public would have a
17 chilling effect on the auction participation or
18 because it could directly raise the cost of supply
19 arrangements, thus bidders negotiate to participate
20 in the auction."

21 What do you base your conclusion on
22 in that quote that I just read?

1 A. I base my conclusion on the experience that
2 I have as a New Jersey Auction Manager. So, for
3 example, some bidders in the auction did not want the
4 fact that they had participated in the auction and
5 lost to be revealed. They believed that that was
6 sensitive business information. So I would think
7 that providing more information about their
8 participation to the extent that, as I say here, it
9 reveals something important about their competitive
10 position would have a detrimental effect on the
11 participation of those bidders.

12 Q. Do any of your concerns of certain
13 information being made public at the auction apply to
14 experts retained by governmental agencies reviewing
15 confidential auction information like the Illinois
16 Attorney General's Office and the various State's
17 Attorney's offices in Illinois?

18 A. Can you just go a little slower and repeat
19 the question, please?

20 Q. Given your concerns with certain
21 information being made public, the concerns that you
22 just spoke about, do those concerns still apply to

1 experts retained by government agencies reviewing the
2 confidential information such as the Illinois
3 Attorney General's Office and/or the various State's
4 Attorney's offices in Illinois?

5 A. Such experts reviewing the auction bidding
6 would have to be under some kind of confidentiality
7 agreement. The more experts there are, the more
8 people that see this information, the greater is the
9 chance that information is inadvertently revealed.

10 Q. But if they complied with those
11 confidentiality agreements would those same concerns
12 apply?

13 A. No.

14 Q. Have you considered whether your auction
15 recommendations comply with the Illinois Open
16 Meetings Act?

17 A. No.

18 Q. If you were told that the Auction Manager
19 and others could only communicate officially with the
20 Commission as a group in a public meeting or in a
21 private meeting in which parties could possibly
22 inspect the transcript of the meeting, would that in

1 your opinion affect the auction design you are
2 recommending be adopted?

3 A. Assuming I understand the question
4 correctly, it's the same process in New Jersey. And
5 the way they do it, and I'm not saying that it would
6 work here, there's a meeting that's opened at the
7 start of the auction that's suspended and that can
8 then conclude once the decision on the auction is
9 made. I am not sure I am answering your question,
10 but. And I do not know if there's a parallel here
11 but I presume that there would be.

12 Q. And my last question, in your opinion would
13 your recommended format for the auction be affected
14 if any written or oral communication that imparts or
15 requests material information between the Auction
16 Manager and Staff or Commissioners had to be recorded
17 in a report and be made part of the public record?

18 A. Can you repeat it? I'm sorry.

19 Q. Would your recommended format for the
20 auction be affected if any written or oral
21 communication that imparts or requests material
22 information between the Auction Manager and Staff or

1 Commissioners had to be record in a report and made
2 part of the public record?

3 A. It's possible that it would.

4 MS. SPICUZZA: Thank you. I have no further
5 questions.

6 JUDGE WALLACE: Mr. Fosco?

7 MR. FOSCO: I still have about an hour and a
8 half of cross. Do you want to finish tonight or--

9 JUDGE WALLACE: Let's go off the record.

10 (Whereupon there was then had an
11 off-the-record discussion.)

12 JUDGE WALLACE: Back on the record.

13 JUDGE JONES: Just briefly, Ms. Spicuzza, your
14 cross-examination that you just conducted, you were
15 representing the Cook County State's Attorneys
16 Office, is that correct?

17 MS. SPICUZZA: Yes, Your Honor.

18 JUDGE JONES: The record should note that cross
19 examination is specific to Docket -0159.

20 MS. SPICUZZA: Thank you, Your Honor.

21 JUDGE WALLACE: Who's going to do the cross?

22 MR. GIORDANO: I am.

1 JUDGE WALLACE: We have a new court reporter.

2 So if you could give her your name, please.

3 MR. GIORDANO: I am Patrick Giordano, the law
4 firm of Giordano and Neilan on behalf of the Building
5 Owners and Managers Association of Chicago. And our
6 cross will apply only to the ComEd docket.

7 CROSS EXAMINATION

8 BY MR. GIORDANO:

9 Q. Hi, Dr. LaCasse. Good afternoon.

10 A. Good afternoon.

11 Q. I'd like to refer you to page 11 of your
12 Direct Testimony, lines 244 to 246, where you testify
13 regarding the simultaneous multiple round action used
14 by the FCC to sell licenses for radio spectrum.
15 Isn't it true that you testify there that the FCC
16 spectrum auction ends when bidders are no longer
17 willing to better their bids so that a single highest
18 bidder is left for each license?

19 A. Yes.

20 Q. And isn't it true that the descending clock
21 auction used by the electric utilities in New Jersey
22 and the descending clock auction proposed by ComEd in

1 this proceeding were patterned after the FCC
2 simultaneous multiple-round auction?

3 A. Yes.

4 Q. And isn't it true that the FCC simultaneous
5 multiple-round auction is a pay-as-bid auction?

6 A. Yes.

7 Q. Now, the FCC spectrum license auction is an
8 ascending price auction, correct?

9 A. Yes.

10 Q. Now, would you agree that bidding up the
11 price of a spectrum license in the FCC spectrum
12 auction is analogous to bidders bidding lower in
13 ComEd's descending clock auction?

14 A. Bidding down, you mean?

15 Q. Yes.

16 A. Yes.

17 Q. In discussing the FCC's auction of spectrum
18 licenses at ComEd Exhibit 4.0, page 10, lines 226 to
19 228, you testify that companies that are less
20 efficient have less head room to bid up the price of
21 a license and still make a return on their
22 investments, while companies that are more efficient

1 have more head room and bid higher, correct?

2 A. Yes.

3 Q. Do you agree that some bidders in ComEd's
4 proposed auction may be more efficient than other
5 bidders?

6 A. Yes.

7 Q. And do you agree that these more efficient
8 bidders in ComEd's auction will be able to provide
9 the full requirements product to ComEd at lower cost
10 than less efficient bidders?

11 A. Yes.

12 Q. So, do you also agree that the more
13 efficient bidders in ComEd's auction would have more
14 head room to bid in ComEd's auction and still make a
15 return on their investment?

16 A. Yes.

17 Q. Is it correct that in ComEd's proposed
18 auction the auction ends for a particular product
19 when the number of tranches bid equal the number of
20 tranches of that product which ComEd is procuring,
21 regardless of whether a particular bidder would have
22 been willing to bid a lower price for the product?

1 A. When the auction ends and the number of
2 tranches that are bid is equal to the requirements
3 and bidders know that, they will not be willing to go
4 further down. At that point according to the auction
5 rules, they will not be able to change their bids any
6 further. That's also true for the FCC, and that's
7 what I meant by the line that you quoted at line 244,
8 no longer willing to better their bids, it's really
9 that they're no longer able to change their bids at
10 that point.

11 JUDGE JONES: Excuse me just a second. I
12 apologize for interrupting. Our court reporter needs
13 to change out her cartridge.

14 (Whereupon the hearing was in a
15 brief recess.)

16 JUDGE JONES: Back on the record.

17 BY MR. GIORDANO:

18 Q. Dr. LaCasse, you mentioned the FCC spectrum
19 auction. Isn't it true that in the FCC spectrum
20 auction the bidding stops only when there's one
21 bidder left for a particular spectrum, correct?

22 A. Yes.

1 Q. And in the ComEd proposed auction there
2 will be multiple bidders left bidding on particular
3 products when the bidding stops at a market clearing
4 price, correct?

5 A. There would be one bidder for each tranche.
6 It's similar, the same.

7 Q. You're saying that it's your position that
8 the tranche is equivalent to a spectrum license?

9 A. Yes.

10 Q. But the FCC spectrum -- auction of spectrum
11 is pay-as-bid, correct?

12 A. Yes.

13 Q. In the ComEd auction, though, if you have a
14 particular product there will be multiple bidders
15 remaining for that product when the auction stops at
16 a market clearing price, correct?

17 A. Yes.

18 Q. Do you agree that in the FCC's auction of
19 spectrum licenses bidders can keep on bidding up the
20 price of the license until they are no longer willing
21 to bid higher?

22 A. No.

1 Q. Why not?

2 A. They will keep -- you will have one bidder
3 that is the standing winner on that particular
4 spectrum license, will be the only one when other
5 bidders have stopped bidding on the same license and
6 is the only remaining bidder. It doesn't say
7 anything about if there were another bidder wanting
8 to go higher would that bidder go higher too, we
9 don't know that.

10 Q. They wouldn't be prohibited in the FCC
11 spectrum license from coming in and making the higher
12 bid, would they?

13 A. They're standing high bidders; they don't
14 have the opportunity to better their own bid.

15 Q. But another bidder could come back into the
16 spectrum auction and make a higher bid, correct?

17 A. Yes.

18 Q. And at that point the last bidder could
19 come back in and make a higher bid, correct?

20 A. Yes.

21 Q. In the FCC spectrum auction?

22 A. Yes.

1 Q. And isn't it true that in ComEd's proposed
2 auction, unlike the FCC's auction, the bidding can
3 stop prior to the time that a particular bidder is
4 willing to better her offer?

5 A. It's the same. For a given tranche if
6 there is bidder that's competing and will want to bid
7 additional tranches at a lower price, then where will
8 that bidder -- there has to be a competitor for the
9 price to change. In the FCC auction there has to be
10 a competitor willing to push the price up. In the
11 ComEd auction there has to be a competitor to push
12 the price down.

13 Q. But it can stop for a particular product
14 prior to the time that a particular bidder is willing
15 to bid to better her offer on that product, correct?

16 A. No. If the requirements are filled, the
17 bidders will not want to better their offer. They're
18 just reducing their margin, given that they have won
19 the tranche.

20 Q. And they won't want to better their offer
21 because at that point they will be informed that they
22 had won, correct? That's the reason they won't want

1 to better, correct?

2 A. That's correct.

3 Q. But if they didn't know that, it's possible
4 that they might want to better their offer, correct?

5 A. And it's possible that they would have
6 stopped bidding before or after. So they could be
7 bidding higher or lower.

8 Q. So let's talk about that, about your
9 testimony in your rebuttal regarding aggressive
10 bidding and so forth and pay-as-bid versus uniform
11 price auction. Let's refer you to ComEd
12 Exhibit 11.0, page 67, lines 1584 to 1585. Now, you
13 state there, don't you, that the bidder in the
14 pay-as-bid auction is paid exactly the bid he
15 submitted in the pay-as-bid auction. If the two bids
16 are the same, then of course the supplier is paid
17 more in the uniform price auction, correct?

18 A. Yes.

19 Q. But it's your position, isn't it, that
20 bidding in a pay-as-bid auction versus a uniform
21 price auction could be different because bidders
22 would have incentives to bid lower in a uniform price

1 auction, correct?

2 A. Yes.

3 Q. Now let me refer you to page 67, lines 1582
4 -- I'm sorry, on 1585 where you go on to state but if
5 the two bids are different, the bidder could equally
6 well be paid less in a uniform price auction. For
7 example, the bidder could bid \$40 a megawatt hour in
8 the uniform price auction and be paid \$45 a megawatt
9 hour. The bidder could bid \$50 per megawatt hour in
10 the pay-as-bid auction and be paid \$50 a megawatt
11 hour; that's your testimony, correct?

12 A. That's the example in the testimony, yes.

13 Q. So isn't it true that this example
14 reflects -- and this is the example about the uniform
15 price auction -- reflects a uniform market clearing
16 price of \$45 a megawatt hour?

17 A. Yes.

18 Q. So isn't it also true in that in ComEd's
19 proposed auction, the example you gave here, where
20 the bidder bids \$40 and receives \$45 could never ever
21 happen because ComEd would have stopped the auction
22 at the market clearing price of \$45 per megawatt

1 hour?

2 A. Yes, and the bidders are bidding
3 quantities, not prices.

4 MR. GIORDANO: Your Honor, I move to strike
5 everything after the word "yes".

6 JUDGE WALLACE: It's stricken.

7 BY MR. GIORDANO:

8 Q. Now, earlier under questioning by Ms.
9 Hedman I believe you testified, and I want to clarify
10 this, I believe you testified under the rules of
11 ComEd's proposed auction that bidders would not know
12 the amount of the excess supply, is that correct,
13 what you said?

14 A. They don't know the exact amount.

15 Q. But isn't it true that under the rules of
16 the proposed auction the bidders would be given
17 information on the amount of excess supply in the
18 auction, correct?

19 A. Correct.

20 Q. And that's discussed in detail on ComEd
21 Exhibit 19.3, page 33, correct, where you state that
22 the range of excess supply reported to bidders will

1 change as the auction progresses and so forth?

2 A. Yes.

3 Q. Now, let me refer to page 34 to 35, lines
4 732 to 735, of your Surrebuttal Testimony. 34 to 35.
5 You're talking about Dr. Laffer's pay-as-bid proposal
6 and you state on line 734, continued on the next
7 page, don't you, that bidders will in fact pull out
8 when they believe that the requirements for the ComEd
9 load have been met. And you go on to say let's
10 suppose just for the moment that a bidder knew that
11 he and possibly others were still bidding, but that
12 the supply bid was now below the ComEd requirement.

13 Strike the second part. I want to ask you
14 about the first part where you state bidders will in
15 fact pull out when they believe that the requirements
16 for the ComEd load has been met; that's your
17 testimony, correct?

18 A. Yes.

19 Q. Isn't it true that under Dr. Laffer's
20 proposal the bidder would not know whether or not the
21 requirements for the ComEd load have been met?

22 A. That's why I said when they believe that

1 the requirements for the ComEd load have been met.

2 Q. But in your proposal they would know; they
3 would be informed when the requirements for the ComEd
4 have been met, correct?

5 A. The auction would end, so they would know.

6 Q. Now, you also were asked some questions by
7 Mr. Rosen and I'd like to ask you a question along
8 those lines. In making your Auction Manager report
9 to the Commission will you compare the market
10 clearing price, that is the uniform price for a
11 particular product, with wholesale market prices for
12 like products at that time in making your report to
13 the Commission?

14 A. I don't believe that there are like
15 products. There are full requirements products of
16 the auction products that are being traded. So I
17 don't believe that that would be possible.

18 Q. But will you look at information on
19 wholesale forward products to see if the price from
20 the auction was a reasonable reflection of the market
21 conditions at the time?

22 A. I believe I just answered that. There's no

1 comparable product in the wholesale markets where
2 there would be a comparison to the auction product.
3 There is an assembly that could be made in lots of
4 different ways by the bidders of various full cup
5 products and price management services.

6 Q. So you're saying you could not look at the
7 wholesale market? You don't have the information to
8 be able to look at the wholesale market at the time
9 to see if the price for the products was reasonable;
10 you couldn't do that analysis?

11 A. Make a direct comparison no, I don't
12 believe so.

13 Q. But could you get information that would
14 make you able to determine whether that price was
15 reasonable? Even if it wasn't a direct comparison
16 based on market price conditions at the time could
17 you make that comparison?

18 A. I don't believe so.

19 Q. Now, if the Commission were to adopt
20 Dr. Laffer's pay-as-bid modification to ComEd's
21 proposed auction procurement process, would you be
22 willing to serve as Auction Manager?

1 A. Yes.

2 MR. GIORDANO: Thank you. I have nothing
3 further.

4 JUDGE WALLACE: Off the record.

5 (Whereupon there was then had an
6 off-the-record discussion.)

7 JUDGE WALLACE: Okay. Let's go back on.

8 Mr. Reddick?

9 MR. REDDICK: Thank you.

10 CROSS EXAMINATION

11 BY MR. REDDICK:

12 Q. Dr. LaCasse, my name is Conrad Reddick and
13 I represent the IIEC.

14 A. Good afternoon.

15 Q. Respecting the design for the auction, was
16 the original design of the auction that's being
17 proposed here yours or ComEd's?

18 A. It's patterned on the New Jersey auction,
19 and I was part of the team that designed that
20 auction.

21 Q. And there are differences between the New
22 Jersey auction and the Illinois auction, are there

1 not?

2 A. Yes.

3 Q. And what was the source of those changes?

4 A. Consideration of the situation in Illinois,
5 and both ComEd's consideration and my advice to them.

6 Q. So it was a collaborative effort, was it?

7 A. Yes.

8 Q. And the changes discussed in your Rebuttal
9 Testimony from the original proposal presented in
10 your direct testimony, where did those changes
11 originate?

12 A. Those are changes that ComEd agreed to.

13 Q. Did you propose changes to ComEd and they
14 agreed?

15 A. No, I believe it was other intervenors.

16 Q. So ComEd selected changes suggested by
17 other intervenors and you accepted them?

18 A. I provided advice as to whether they would
19 be beneficial or would work with the auction process
20 that had been proposed.

21 Q. Where did the final decision get made, with
22 you or ComEd?

1 A. I think to answer that I'd have to have a
2 proposed change that I disagreed with but that was
3 not the case.

4 Q. The question was where were the final
5 decisions made, with you or ComEd?

6 A. It was a collaborative effort.

7 Q. And in no instance was a change proposed by
8 ComEd that you disagreed with?

9 A. That's correct.

10 Q. And were there changes that you would have
11 made that ComEd did not agree with?

12 A. No.

13 Q. So in every instance you were of the same
14 mind?

15 A. Yes.

16 Q. Were there considerations that went into
17 the auction design or into the changes that we were
18 just discussing that are not based on auction theory
19 alone?

20 A. Could you refer to specific changes for
21 that?

22 Q. Well, I'm not the expert so I couldn't

1 guess which ones they might be.

2 A. Are you referring to the changes that I
3 discussed in the Rebuttal Testimony? Could you give
4 me a point in the testimony that I can look at to
5 refresh my recollection on the changes so I can
6 answer your question?

7 Q. The question is, is any change discussed in
8 your Rebuttal Testimony not based on auction theory
9 alone?

10 A. To the extent that there were changes such
11 as changes for supply forward contract, changes to
12 the process or additions that were made to the
13 process or discussion of the Auction Manager report,
14 auction advisor reports, that are all additions in
15 that point and changes from the direct case, those
16 are not strictly auction theory changes.

17 Q. Would you answer the same question
18 restricting yourself to the conduct of the auction
19 itself?

20 A. And by that you mean the auction rules?

21 Q. Yes.

22 A. No, there were no changes that are not

1 supported by auction theory there.

2 Q. Were there any considerations besides
3 auction theory that went into those changes?

4 A. Yes.

5 Q. Would you identify a change for which
6 something other than auction theory was involved?

7 A. For example, in deciding the group of
8 products among which there were switching there was
9 more than auction theory that was at play and
10 thinking of whether there were benefits or costs to
11 allowing change among various products, whether they
12 were good economic substitutes. That's not strictly
13 auction theory, but one example that I had in my
14 mind.

15 Q. Okay. Do you recall whether something
16 other than auction theory was involved in your
17 decision on the load cap?

18 A. I believe that Mr. McNeil testified that in
19 the original proposal for the load cap the views of
20 various interveners had been taken into account in
21 putting forward the initial proposal.

22 Q. And in settling on the 35 percent proposal,

1 you opined to ComEd that it was consistent with
2 auction theory?

3 A. That it was reasonable and I believe
4 balanced the advantages and disadvantages of various
5 levels of the load cap. As you know, some of the
6 consideration, like that we believe that it would
7 spur participation in the auction, are not strictly
8 auction theory consideration. They're based on
9 experience and what I know about auctions but they're
10 not based on auction theories.

11 Q. So there was some subjective judgment that
12 went into that process?

13 A. Yes.

14 Q. And if I recall correctly, you did not
15 conduct quantitative analyses to support the 35
16 percent as opposed to some other number?

17 A. That's correct.

18 MR. REDDICK: At this time, Your Honor,
19 Mr. Rippie and I have come up with a way to shorten
20 it and it requires marking a stack of pages as an
21 exhibit. So I would like to mark it as an IIEC Cross
22 Exhibit but I'm not sure which number we're on.

1 (Whereupon IIEC Cross Exhibit 3
2 was marked for purposes of
3 identification as of this date
4 in Docket 05-0159 and 05-0160,
5 0161, 0162.)

6 BY MR. REDDICK:

7 Q. Dr. LaCasse, have you had a chance to
8 review what has been marked for identification as
9 IIEC Cross Exhibit Number 3?

10 A. Yes.

11 Q. And am I correct that each page of that is
12 a data request response from ComEd that was in
13 response to questions by IIEC?

14 A. Yes.

15 Q. And were you involved in the preparation of
16 those responses?

17 A. Yes.

18 Q. We can set that aside for now and let's
19 move on. One aspect of the auction design, not
20 respecting the conduct of the auction but the entire
21 package, is a fairly extensive set of credit and
22 collateral requirements, is that correct?

1 A. Yes.

2 Q. And is the purpose of those requirements to
3 protect against suppliers' non-performance or some
4 sort of financial default by a supplier?

5 A. Yes.

6 Q. Are they designed to provide adequate
7 financial resources that consumers are not deprived
8 of supply in the event of a supplier default of any
9 kind?

10 A. That's my understanding.

11 Q. Turning to the auction product, the slice
12 of the system tranches, that product on which bidders
13 will bid quantities in the auction is unique to the
14 ComEd auction or in the case of Ameren to the Ameren
15 auction, wouldn't it be?

16 A. You mean that it's specifically for the
17 ComEd load and for the Ameren load, is that what you
18 are saying?

19 Q. Yes.

20 A. Yes.

21 Q. And there would be no need or use for
22 someone to sell that product or buy that product if

1 they were not serving the ComEd load or the Ameren
2 load?

3 A. The entire package, that's correct.

4 Q. Have you determined an anticipated number
5 of bidders in the ComEd auction?

6 A. I have from my New Jersey experience and
7 also I believe there was a data request to that
8 effect, some idea of what the numbers would be, yes.

9 Q. Could you give us an estimate of the
10 participation?

11 A. Assuming that it goes as in New Jersey, for
12 example, certainly over 20 bidders.

13 Q. And that would be for both ComEd and
14 Ameren?

15 A. I was just thinking about ComEd, so it
16 could be larger, given the fact that there is
17 switching and there are two utilities involved.

18 Q. I was a bit confused by that number. What
19 would be the anticipated participation for ComEd?

20 A. I'm giving an over 20 estimate and I'm
21 saying counting Ameren it could be greater.

22 Q. So the number you're giving me is for the

1 combined, to the extent that it is combined?

2 A. Yes.

3 Q. Do you know the number of retail suppliers
4 or customers in the ComEd territory?

5 A. RESEs, you mean?

6 Q. Yes.

7 A. I don't know why I know that but I think
8 it's seven.

9 Q. And do you know the number for Ameren's
10 territory?

11 A. I don't know that.

12 Q. Let's turn to the review process. If I
13 understand the process that ComEd proposes, the
14 conveners of the post-auction workshop would
15 highlight improvement that were identified in that
16 process that had reached the level of a consensus
17 among the group, am I correct?

18 A. That's my understanding.

19 Q. Does that process require that the
20 conveners report as well on proposals or suggestions
21 that did not achieve a consensus?

22 A. I don't know to that degree of detail.

1 Q. As prospective Auction Manager, would you
2 propose or recommend that the conveners report such
3 suggestions even if they do not achieve a consensus
4 level?

5 A. Yes.

6 Q. The FCC auction that you used as a basis
7 for discussing the auction in your Rebuttal Testimony
8 was an auction that was designed to get the highest
9 price for taxpayers, correct?

10 A. I don't know if it was for taxpayers, but
11 they were selling something, buyers were buying, so
12 the highest buyer that is willing to bid the highest
13 price wins in that contest.

14 Q. Okay, that's good enough. Now, we're using
15 something that's similar in this process and we're
16 supposed to get the lowest price. Tell me how.

17 A. That's basically because you're on the
18 other side of the market. So in the FCC auction
19 there is a seller of some products and bidders are
20 bidding up the prices until they're no longer willing
21 to change their bids. Now we're on the other side of
22 the market and there are buyers and the people

1 competing are sellers. And instead of increasing
2 their bids, they're decreasing the quantity they bid
3 at each price until they can no longer change their
4 bids. So it's just the other side of the market.

5 Q. I have one last area to talk about. Do you
6 agree with me that your performance as Auction
7 Manager would be the same whether you were retained
8 by the ICC or by ComEd?

9 A. Yes.

10 Q. And with respect to the conduct of the
11 auction, the auction manager should be indifferent as
12 to whether ComEd or the ICC is the authority retained
13 to conduct the auction?

14 MR. REDDICK: That's all. Thank you. I do
15 move the admission of IIEC Cross Exhibit 3 in both
16 the ComEd and Ameren dockets.

17 JUDGE WALLACE: Is there any objection?

18 MR. RIPPIE: No.

19 JUDGE WALLACE: IIEC Cross Exhibit 4 is
20 admitted in 05-0159.

21 COURT REPORTER: No, it is 3.

22 JUDGE WALLACE: Pardon me? What did I say? I

1 wrote down 4. Three.

2 (Whereupon IIEC Cross Exhibit 3
3 was admitted into evidence in
4 Docket 05-0159.)

5 JUDGE JONES: Also IIEC Cross Exhibit Number 3
6 is admitted into the evidentiary record in the Ameren
7 Company proceedings 05-0160, etc. We'll use the same
8 numbering for purposes of providing consistency to
9 the numbering of exhibits. There may not be a one
10 and a two preceding every three cross exhibits in
11 this proceeding.

12 (Whereupon IIEC Cross Exhibit 3
13 was admitted into evidence in
14 Docket 05-0160, 0161, 0162.)

15 JUDGE WALLACE: Dr. LaCasse, I'm going to ask
16 you a question now because I might forget by
17 tomorrow.

18 EXAMINATION

19 BY JUDGE WALLACE:

20 Q. Is the spectrum similar to a tranche?

21 A. A license, yes.

22 Q. All right. You've said several times that

1 bidders in the ComEd proposal and the Ameren proposal
2 bid a quantity?

3 A. That's correct.

4 Q. In a spectrum license you are bidding for a
5 specific license, right?

6 A. That's right. So it would be equivalent to
7 when they bid in spectrum auctions to say do you want
8 to go up to the next price, given that they're buying
9 in the ComEd auction, given that they are supplying,
10 they'll be willing to supply at a high price and
11 we're asking them are you willing to go down to a
12 price. And if they say yes, then they are bidding a
13 certain quantity at that price.

14 JUDGE WALLACE: Okay, thank you.

15 JUDGE JONES: Off the record.

16 (Whereupon there was then had an
17 off-the-record discussion.)

18 JUDGE JONES: All right. Today's hearing is
19 concluded. We will resume at 9:00 a.m. Have a good
20 evening.

21 (Whereupon the hearing in this
22 matter was continued until
September 9, 2005, at 9:00 a.m.
in Springfield, Illinois.)